49

STANDING COMMITTEE ON FINANCE

(2011-12)

FIFTEENTH LOK SABHA

Ministry of Finance
(Department of Revenue)

THE DIRECT TAXES CODE BILL, 2010

FORTY-NINTH REPORT

LOK SABHA SECRETARIAT
NEW DELHI

March, 2012/ Phalguna, 1933 (Saka)

FORTY-NINTH REPORT

STANDING COMMITTEE ON FINANCE
(2011-2012)

(FIFTEENTH LOK SABHA)

Ministry of Finance
(Department of Revenue)

THE DIRECT TAXES CODE BILL, 2010

Presented to Hon'ble Speaker on 9 March, 2012

Presented to Lok Sabha on 13 March, 2012

Laid in Rajya Sabha on 13 March, 2012

LOK SABHA SECRETARIAT
NEW DELHI

March, 2012/ Phalguna, 1933 (Saka)

CONTENTS

Page No.

COMPOSITION OF THE COMMITTEE ..... (iii)

INTRODUCTION ..... (iv)

REPORT

PART I

INTRODUCTION AND OVERVIEW 1

OBSERVATIONS/RECOMMENDATIONS 44

PART II

CLAUSE BY CLAUSE EXAMINATION

Chapter I	BASIS OF CHARGE	55
Chapter II	INCOME FROM HOUSE PROPERTY	68
Chapter III	INCOME FROM BUSINESS	81
Chapter IV	CAPITAL GAINS	112
Chapter V	INCOME FROM RESIDUARY SOURCES	158
Chapter VI	CONTROLLED FOREIGN COMPANIES	167
Chapter VII	TAX INCENTIVES	177
Chapter VIII	MAINTENANCE OF ACCOUNTANTS AND OTHER RELATED MATTERS	207
Chapter IX	SPECIAL PROVISIONS RELATING TO THE COMPUTATION OF TOTAL INCOME ON NON-PROFIT ORGANISATIONS	211
Chapter X	COMPUTATION OF BOOK PROFIT	231
Chapter XI	DIVIDEND DISTRIBUTION TAX	246
Chapter XII	SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME	254
Chapter XIII	BRANCH PROFITS TAX	259
Chapter XIV	WEALTH TAX	262
Chapter XV	PREVENTION OF ABUSE OF THE CODE	
	(A) TRANSFER PRICING REGULATIONS	277
	(B) ADVANCE PRICING AGREEMENT	287
	(C) GENERAL ANTI AVOIDANCE RULE (GAAR)	290
Chapter XVI	DEDUCTION OF TAX AT SOURCE	302

APPENDICES

I. Dissent note submitted by Shri Gurudas Dasgupta, MP and Shri Moinul Hassan, MP ……..

II. Minutes of the sittings of the Committee held on 18 November, 2010, 19 January, 2011, 17 October, 2011, 11 November, 2011, 10 February, 2012, 17 February, 2012, 24 February, 2012 and 2 March, 2012 ……..

III. The Direct Taxes Code Bill, 2010

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2011-2012

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Shri M. Thambidurai

RAJYA SABHA

22. Shri S.S. Ahluwalia
23. Shri Raashid Alvi
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri Moinul Hassan
27. Shri Satish Chandra Misra
28. Shri Mahendra Mohan
29. Dr. Mahendra Prasad
30. Dr. K.V.P. Ramachandra Rao
31. Shri Yogendra P. Trivedi

SECRETARIAT

1.	Shri A.K. Singh	-	Joint Secretary
2.	Shri R.K. Jain	-	Director
3.	Shri Ramkumar Suryanarayanan	-	Deputy Secretary

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Forty-Ninth Report on 'the Direct Taxes Code Bill, 2010'.

2. The Direct Taxes Code Bill, 2010, introduced in Lok Sabha on 30 August, 2010 was referred to the Committee on 09 September, 2010 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took briefing/ oral evidence of the representative of Ministry of Finance (Department of Revenue) at their sittings held on 18 November, 2010 and 11 November, 2011.

4. The Committee at their sitting held on 19 January, 2011 heard the views of the representatives of Confederation of Indian Industries (CII) and Institute of Chartered Accountants of India (ICAI). At the sitting held on 17 October, 2011 the representatives of NASSCOM, Export Promotion Council for EOUs and SEZs, Earnest and Young Private Limited, KPMG, Coalition of International taxation in India and Cellular Operators Association of India presented their views before the Committee.

5. The Committee also heard the views of several stakeholders like Bombay Chambers of Commerce, Bombay chartered Accountants Society, General Insurance Council and Life Insurance Council, Indian Merchant's Chamber, Madras Chambers of Commerce and Industry, Income Tax Appellate Tribunal Bar Association, Mumbai, Saifee Hospital Trust, National Sea Farers Association, Container Shipping Lines Associations, All India Federation of Tax Practitioners etc. during the study visit of the Committee conducted from 31st January, 2011 to 3rd February, 2011 in Mumbai and Chennai. Certain issues relating to tax administration were also discussed with the Income Tax Department during the study visit to Srinagar during 15-16 June, 2011.

6. The Committee at their sittings held on 10th February, 2012, 17 February, 2012, 24 February, 2012 discussed the draft Report on 'the Direct Taxes Code Bill, 2010' and adopted the same at their sitting held on 2nd March, 2012.

7. The Committee wish to express their appreciation to the officials of the Ministry of Finance (Department of Revenue) concerned with the Bill for their co-operation and all the organizations and experts for their valuable suggestions on the Bill.

8. For facility of reference, observations/recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
6 March, 2012
16 Phalguna, 1933(Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

REPORT

PART- I

Introduction and Overview

1. The Direct Taxes Code Bill, 2010 (DTC) has been referred to the Standing Committee on Finance of Parliament for detailed examination and report thereon. It consolidates and integrates all the direct tax laws and replaces both the Income Tax Act, 1961 and the Wealth-tax Act, 1957 by a single legislation, namely the Direct Taxes Code (DTC). The Bill consists of 22 Chapters including 319 Clauses and 22 Schedules. Before embarking on the detailed examination of the Bill, it may be pertinent to have a brief overview indicating the process of examination, salient features of the Bill, objectives behind comprehensive review of the Income Tax Act, 1961 and the Wealth Tax Act, 1957, new principles / concepts introduced in the Bill, broader issues concerning the subject etc.

Process of examination

2. The Direct Taxes Code Bill, 2010 was referred to the Standing Committee on Finance on 09 September, 2010 for detailed examination and Report thereon. At the outset, detailed background note was obtained from the Ministry of Finance (Department of Revenue), based on which preliminary questionnaire was sent to them. A communication was sent to different stakeholders like Chambers of Commerce, professional bodies, associations/councils, Non-Governmental Organisations, charitable societies and companies/firms etc. for furnishing their views/suggestions on the Bill. Subsequently, a Press Communiqué inviting suggestions of the public including experts on the Bill was also issued on 2 November, 2010. In response to the communication and Press Communiqué, a large number of memoranda numbering about 260, comprising of thousands of suggestions were received. The memoranda pertain to different categories such as Chambers of Trade and Commerce, Professional Institutions, NGOs and Charitable Societies/Trusts, Companies/Firms, Associations/Councils, Senior Citizen Groups and individuals/experts. The suggestions received were compiled, tabulated and forwarded to the Ministry for their comments inter-alia seeking comments on various aspects like tax rates/slabs,

incentives/exemptions, new provisions introduced and rationale thereof issues relating to international taxation, Non-Profit Organisations, provisions relating to anti-avoidance etc. A comprehensive questionnaire comprising both general issues and clause related points was also sent to the Ministry for their comments.

3. During the course of examination of the Bill, the Committee held a number of sittings which included briefing/oral evidence of representatives of the Ministry of Finance (Department of Revenue) and the oral hearings of the representatives of different stakeholders like CII, ICAI, NASSCOM, Export Promotion Council for EOUs and SEZs. Earnst and Young Private Limited, KPMG, Coalition of International taxation in India and Cellular Operators Association of India. The Committee also heard the views of several stakeholders like Bombay Chambers of Commerce, Bombay Chartered Accountants Society, General Insurance Council and Life Insurance Council, Indian Merchant's Chamber, Madras Chambers of Commerce and Industry, Income Tax Appellate Tribunal Bar Association, Mumbai, Saifee Hospital Trust, National Sea Farers Association, Container Shipping Lines Associations, All India Federation of Tax Practitioners etc. during the study visit of the Committee conducted from 31st January, 2011 to 3rd February, 2011 in Mumbai and Chennai. Certain issues relating to tax administration were also discussed with the Income Tax Department during the study visit to Srinagar during 15-16 June, 2011. Subsequently, the Committee concluded their examination of the Bill after taking clause-by-clause oral evidence of the Ministry. Thus examination of the Bill was very detailed and exhaustive spanning a little more than a year.

Structure of the Income Tax Act, 1961, Wealth Tax Act, 1957 and the proposed Direct Taxes Code Bill, 2010

4. Structure of the existing Income Tax Act, 1961, the Wealth Tax Act, 1957 and the proposed Direct Taxes Code Bill, 2010 is as follows :

A. Income Tax Act, 1961

5. The Income Tax Act 1961 lays down the frame work or the basis of charge and the computation of total income of a person. It also stipulates the manner in

which it is to be brought to tax, defining in detail the exemptions, deductions, rebates and reliefs. The Act defines Income Tax Authorities, their jurisdiction and powers. It also lays down the manner of enforcement of the Act by such authorities through an integrated process of assessments, collection and recovery, appeals and revisions, penalties and prosecutions. The Act has been amended annually through the Finance Act.

Income Tax Act, 1961 comprises of

(i) 23 Chapters
(ii) 656 Sections
(iii) 14 Schedules

B. Wealth Tax Act, 1957

6. Wealth tax, in India, is levied under Wealth-tax Act, 1957. Wealth tax is a tax on the benefits derived from property ownership. The tax is to be paid year after year on the same property on its market value, whether or not such property yields any income. Similar to income tax the liability to pay wealth tax also depends upon the residential status of the assessee.

The Wealth Tax Act, 1957 comprises of

(i) 8 Chapters
(ii) 47 Sections

C. Proposed Direct Taxes Code Bill, 2010

7. The Direct Taxes Code Bill, 2010 consolidates and integrates all direct tax laws and replaces both the Income-tax Act, 1961 and the Wealth-tax Act, 1957 by a single legislation. The provisions applicable to a taxpayer are in the main clauses while complex computations and exceptions have been placed in Schedules.

The proposed DTC Bill, 2010 comprises of

(i) 22 Chapters
(ii) 319 Clauses
(iii) 22 Schedules

SALIENT FEATURES OF THE DIRECT TAXES CODE, 2010 INCLUDING THE SIGNIFICANT PROVISIONS PROPOSED IN THE BILL.

8. The Government seeks to provide a modern tax code in step with the needs of a fast growing economy and is aimed at widening the tax net and increasing Government revenues. The salient features of the code are as follows:

(i) It consolidates and integrates all direct tax laws and replaces both the Income Tax Act, 1961 and the Wealth Tax Act, 1957 by a single legislation.

(ii) It simplifies the language of the legislation. The use of direct, active speech, expressing only a single point through one sub-section and rearranging the provisions into a rational structure will assist a lay person to understand the provisions of the Direct Taxes Code (DTC).

(iii) It indicates stability in direct tax rates. Currently, the rates of tax for a particular year are stipulated in the Finance Act for that relevant year. Therefore, even if there is no change proposed in the rates of tax, the Finance Bill has still to be passed indicating the same rates of tax. Under the Code, all rates of taxes are proposed to be prescribed in Schedules[1] to the Code, thereby obviating the need for annual finance bill, if no change in the tax rate is proposed.

(iv) One of the key aims of tax code is to provide a system which takes into account increased cross border mergers and acquisition by Indian corporates.

(v) It is also expected to streamline tax rates and administration for foreign institutional investors.

(vi) It strengthens taxation provisions for international transactions. This has been reflected in the new provisions. The salient new provisions with regard to international taxation are :

(a) Introduction of Advance Pricing Agreements for International Transactions[2]-

(b) Alignment of concept of residence[3] (of a Company) with India's tax treaties by introduction of concept of "place of effective management" instead of "wholly controlled" in India.

(c) Controlled Foreign Company Regulations[4]-

(d) Introduction of Branch Profit Tax[5] on foreign companies in lieu of higher rate of taxation.

---

[1] First to Fourth Schedule of the DTC Bill.
[2] 118 of the DTC Bill
[3] Clause 4 of the DTC Bill.
[4] Twentieth Schedule of the DTC Bill.
[5] Clause 111 of the DTC Bill.

(e) Introduction of General Anti Avoidance Rule (GAAR)[6] to curb aggressive tax planning.

(vii) Rationalising exemptions.

(viii) Replace profit linked tax incentives with investment linked incentives[7]-

(ix) Simplification of Appellate Procedure for Public Sector Undertakings[8].

Need for comprehensive review of the existing Income Tax and Wealth tax Acts

9. The Committee sought to know about the requirement for doing comprehensive review of the existing Income Tax and Wealth Tax Acts. In response, the Ministry of Finance (Department of Revenue) in their written note stated as under :

> "The Income-tax Act, 1961, has been subjected to numerous amendments since its passage fifty years ago. It has been considerably revised, not less than thirty-four times, by amendment Acts besides the amendments carried out through the annual Finance Acts. These amendments were necessitated by policy changes due to the changing economic environment, increasing sophistication of commerce, increase in international transactions as a result of globalisation, development of information technology, attempts to minimize tax avoidance and in order to clarify the statute in relation to judicial decisions. As a result of all these amendments, the basic structure of the Income-tax Act has been over burdened and its language has become complex. In particular, the numerous amendments have rendered the Act difficult to decipher by the average tax-payer. The Wealth-tax Act, 1957 has also witnessed amendments.
>
> The Government, therefore, decided to revise, consolidate and simplify the language and structure of the direct tax laws. A draft Direct Taxes Code along with a Discussion Paper was released in August, 2009 for public comments. It proposed to replace the Income-tax Act, 1961 and the Wealth-tax Act, 1957 by a single Act, namely the Direct Taxes Code. Public and stakeholder feedback on the proposals outlined in these documents was analysed and suggestions for amendments received from members of the public, business associations and other bodies were taken into account by the Government. Thereafter, a Revised Discussion Paper addressing the major issues was released in June, 2010. The present Bill is the outcome of this process".

[6] Clause 123 of the DTC Bill.
[7] Eleventh, Twelfth and Thirteenth Schedule of DTC Bill
[8] Clause 256-267 (Chapter XVI) of the DTC Bill.

Amendments made in the Income Tax Act, 1961 : a historical perspective

10. Apprising the Committee of the amendments made so far in the Income Tax Act, 1961, the Ministry in their written note submitted as under :

> "1. The Income Tax Bill, 1961, as introduced in Lok Sabha on 24th March, 1961, had 298 serially listed sections and Four Schedules. The Income Tax Act, 1961 as it stands today has around 656 sections and Fourteen Schedules. The Act has been amended through numerous amendment acts besides the annual Finance Acts passed over the last 50 years. A list of the specific amendment Acts through which the Act has been amended is given below :

Sl. No.	
1.	The Finance (No. 2) Act, 1962 (20 of 1962)
2.	The Taxation Laws (Amendment) Act, 1962 (54 of 1962)
3.	The Finance Act, 1963 (13 of 1963)
4.	The Super Profits Tax Act, 1963 (14 of 1963)
5.	The Income-tax (Amendment) Act, 1963 (43 of 1963)
6.	The Central Boards of Revenue Act, 1963 (54 of 1963)
7.	The Taxation Laws (Extension to Union Territories) Regulation, 1963
8.	The Finance Act, 1964 (5 of 1964)
9.	The Direct Taxes (Amendment) Act, 1964 (31 of 1964)
10.	The Income-tax (Amendment) Act, 1965 (1 of 1965)
11.	The Finance Act, 1965 (10 of 1965)
12.	The Finance (No.2) Act, 1965 (15 of 1965)
13.	The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965 (41 of 1965)
14.	The State of Nagaland (Adaptation of Laws on Union Subjects) Order, 1965
15.	The Finance Act, 1966 (13 of 1966)
16.	The Finance (No.2) Act, 1967 (20 of 1967)
17.	The Taxation Laws (Amendment) Act, 1967 (27 of 1967)
18.	The Finance Act, 1968 (19 of 1968)
19.	The Punjab Reorganisation and Delhi High Court (Adaptation of Laws on Union Subjects) Order, 1968
20.	The Finance Act, 1969 (14 of 1969)
21.	The Finance Act, 1970 (19 of 1970)
22.	The Taxation Laws (Amendment) Act, 1970 (42 of 1970)
23.	The Finance (No.2) Act, 1971 (32 of 1967)
24.	The Finance Act, 1972 (16 of 1972)
25.	The Income-tax (Amendment) Act, 1972 (41 of 1972)
26.	The Taxation Laws (Amendment) Act, 1972 (45 of 1972)
27.	The Rulers of Indian States (Abolition of Privileges) Act, 1972 (54 of 1972)
28.	The Finance Act, 1973 (21 of 1973)
29.	The Income-tax (Amendment) Act, 1973 (66 of 1973)
30.	The State of Himachal Pradesh (Adaptation of Laws on Union Subjects) Order, 1973
31.	The Finance Act, 1974 (20 of 1974)
32.	The Direct Taxes (Amendment) Act, 1974 (26 of 1974)

33.	The Finance (No.2) Act, 1974 (31 of 1974)
34.	The North-Eastern Areas (Reorganisation) (Adaptation of Laws on Union Subjects) Order, 1974
35.	The Lacadive, Minicoy and Amindivi Islands (Alteration of Name) Adaptation of Laws Order, 1974
36.	The Finance Act, 1975 (25 of 1975)
37.	The Taxation Laws (Amendment) Act, 1975 (41 of 1975)
38.	The Income-tax (Amendment) Act, 1976 (1 of 1976)
39.	The Payment of Bonus (Amendment) Act, 1976 (23 of 1976)
40.	The Finance Act, 1976 (66 of 1976)
41.	The Labour Provident Fund Laws (Amendment) Act, 1976 (99 of 1976)
42.	The Finance (No.2) Act, 1977 (29 of 1977)
43.	The Finance Act, 1978 (19 of 1978)
44.	The Taxation Laws (Amendment) Act, 1978 (29 of 1978)
45.	The Finance Act, 1979 (21 of 1979)
46.	The Finance Act, 1980 (13 of 1980)
47.	The Finance (No.2) Act, 1980 (44 of 1980)
48.	The Special Bearer Bonds (Immunities and Exceptions) Act, 1981 (7 of 1981)
49.	The Finance Act, 1981 (16 of 1981)
50.	The Income-tax (Amendment) Act, 1981 (22 of 1981)
51.	The Income-tax (Second Amendment) Act, 1981 (38 of 1981)
52.	The Finance Act, 1982 (14 of 1982)
53.	The Finance Act, 1983 (11 of 1983)
54.	The Finance Act, 1984 (21 of 1984)
55.	The Taxation Laws (Amendment) Act, 1984 (67 of 1984)
56.	The Finance Act, 1985 (32 of 1985)
57.	The Finance Act, 1986 (23 of 1986)
58.	The Income-tax (Amendment) Act, 1986 (26 of 1986)
59.	The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (46 of 1986)
60.	The Finance Act, 1987 (11 of 1987)
61.	The Direct Tax Laws (Amendment) Act, 1987 (4 of 1987)
62.	The Finance Act, 1988 (26 of 1988)
63.	The Benami Transactions (Prohibition) Act, 1988 (45 of 1988)
64.	The Direct Tax Laws (Amendment) Act, 1989 (3 of 1989)
65.	The Income-tax (Amendment) Act, 1989 (11 of 1989)
66.	The Finance Act, 1989 (13 of 1989)
67.	The Direct Tax Laws (Second Amendment) Act, 1989 (36 of 1989)
68.	The Finance Act, 1990 (12 of 1990)
69.	The Taxation Laws (Amendment) Act, 1991 (2 of 1991)
70.	The Finance (No.2) Act, 1991 (49 of 1991)
71.	The Finance Act, 1992 (18 of 1992)
72.	The Finance Act, 1993 (38 of 1993)
73.	The Finance Act, 1994 (32 of 1994)
74.	The Finance Act, 1995 (22 of 1995)
75.	The Depositories Act, 1996 (22 of 1996)
76.	The Finance (No. 2) Act, 1996 (33 of 1996)
77.	The Income-tax (Amendment) Act,1996 (35 of 1996)
78.	The Income-tax (Amendment) Act, 1997 (14 of 1997)
79.	The Finance Act, 1997 (26 of 1997)

80.	The Income-tax (Amendment) Act, 1998 (7 of 1998)
81.	The Finance (No.2) Act, 1998 (21 of 1998)
82.	The Income-tax (Amendment) Act, 1998 (11 of 1999)
83.	The Finance Act, 1999 (27 of 1999)
84.	The Income-tax (Amendment) Act, 1999 (28 of 1999)
85.	The Finance Act, 2000 (10 of 2000)
86.	The Taxation Laws (Amendment) Act, 2000 (1 of 2001)
87.	The Taxation Laws (Amendment) Act, 2001 (4 of 2001)
88.	The Finance Act, 2001 (14 of 2001)
89.	The Finance Act, 2002 (20 of 2002)
90.	The Finance Act, 2003 (32 of 2003)
91.	The Election and Other Related Laws (Amendment) Act, 2003 (46 of 2003)
92.	The Taxation Laws (Amendment) Act, 2003 (54 of 2003)
93.	The Finance (No.2) Act, 2004 (23 of 2004)
94.	The Finance Act, 2005 (18 of 2005)
95.	The Special Economic Zones Act, 2005 (28 of 2005)
96.	The National Tax Tribunal Act, 2005 (40 of 2005)
97.	The Taxation Laws (Amendment) Act, 2005 (55 of 2005)
98.	The Finance Act, 2006 (21 of 2006)
99.	The Taxation Laws (Amendment) Act, 2006 (29 of 2006)
100.	The Finance Act, 2007 (22 of 2007)
101.	The Finance Act, 2008 (18 of 2008)
102.	The Finance (No. 2) Act, 2009 (3 of 2009)
103.	The Finance Act, 2010

11. The Chapters of the original Income Tax Act of 1961 in which **substantial additions and modifications** have been introduced are:

(i) Chapter III- Incomes which do not form part of total income – D. Profits and gains of business or profession, E-Capital gains.

(ii) Chapter VI – Aggregation of income and set off or carry forward of loss.

(iii) Chapter VIII – Rebates and Reliefs

(iv) Chapter XII – Determination of tax in certain special cases

(v) Chapter XVII – Collection and Recovery of Tax – B. Deduction at source – BB. Collection at source

(vi) Chapter XXI-Penalties imposable

(vii) Chapter XXII – Offences and prosecutions

12. The **new Chapters** which are added to the original Income Tax Act of 1961 are:

(i) Chapter VI-A - New Chapter – Deductions to be made in computing total income

(ii) Chapter VI-B – New Chapter – Restriction on certain deductions in the case of companies

(iii) Chapter XII-A- New Chapter - Special provisions relating to certain incomes of non-residents.

(iv) Chapter XII-B – New Chapter - Special provisions relating to certain companies

(v) Chapter XII-D – New Chapter - Special provisions relating to tax on distributed profits of domestic companies

(vi) Chapter XII-E – New Chapter - Special provisions relating to tax on distributed income

(vii) Chapter XII-F – New Chapter – Special provisions relating to tax on income received from venture capital companies and venture capital funds

(viii) Chapter XII-G- New Chapter – Special provisions relating to income of shipping companies

(ix) Chapter XIV-A- New Chapter – Special provision for avoiding repetitive appeals

(x) Chapter XIV-B- New Chapter – Special procedure for assessment of search cases

(xi) Chapter XIX-A- New Chapter – Settlement of cases

(xii) Chapter XIX-B- New Chapter – Advance Rulings

(xiii) New Schedules from The Fifth Schedule to The Fourteenth Schedule".

Objectives of comprehensive review

13. According to the Ministry, the objectives of formulating the DTC were as follows :

(i) To consolidate and integrate all direct tax laws and replace both the Income Tax Act, 1961 and the Wealth Tax Act, 1957 by a single legislation.

(ii) To simplify the language by using direct, active speech, expressing only a single point through one sub-section and rearranging the provisions into a rational structure which would assist a lay person to understand the provisions.

(iii) To indicate stability in direct tax rates by proposing the rates of taxes in a Schedule to the Code, thereby obviating the need for annual legislation if no change in the tax rate is proposed.

(iv) To strengthen taxation provisions for international transactions and to provide a stable framework for taxation of international transactions and global capital.

(v) To rationalise exemptions to expand the tax base in order to achieve a higher tax-GDP ratio, enhance GDP growth, improve equity and allocative efficiency, reduce compliance costs, lower administrative burden, reduce discretion and provide moderate rates of tax to all taxpayers.

(vi) To replace profit linked tax incentives with investment linked incentives. Profit-linked deductions are being phased out of the Income Tax Act and have also been dropped in the DTC. They are being replaced by investment-linked deductions for specified sectors. Investment-linked incentives are linked to creation of productive capacity and therefore superior instruments which target the incentive specifically to the capital investment. Profit linked deductions being currently availed have been protected for the unexpired period in the DTC.

Key International tax practices/provisions incorporated in the Code

14. The following key international best practices have been incorporated in the Bill :

Residence of company to be based on Place of effective management

'Place of effective management' is an internationally recognized concept for determination of residence of a company incorporated in a foreign jurisdiction. Most of our tax treaties recognize the concept of 'place of effective management' for determination of residence of a company as a tie-breaker rule for avoidance of double taxation. It is an internationally accepted principle that the place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are, in substance, made.

The existing tax regime prescribes that a company may be considered as

resident in India if it is incorporated in India or its management and control are wholly situated in India. However, under the code a company incorporated outside India will be treated as resident in India if its 'place of effective management' is situated in India[9].

Controlled Foreign Company (CFC) provision for countering deferral of repatriation of income

15. As an anti-avoidance measure, in line with internationally accepted practices, it is also proposed to introduce Controlled Foreign Company provisions so as to provide that passive income earned by a foreign company which is controlled directly or indirectly by a resident in India, and where such income is not distributed to shareholders resulting in deferral of taxes, shall be deemed to have been distributed. Consequently, it would be taxable in India in the hands of resident shareholders as dividend received from the foreign company[10].

Advance Pricing Agreements

16. A provision has been made in the DTC, allowing for the Board to enter into an Advance Pricing Agreement (APA) with any person who will be conducting an international transaction. The APA will specify the manner in which the arm's length price is to be determined in relation to such international transaction.

17. The Advance Pricing Agreement (APA) binds the taxpayer as well as the department to the agreed transfer pricing methodology upto a period of 5 years, that the Income Tax Department agrees not to challenge provided that all terms of the agreement are followed. The APA brings certainty to the taxpayer that there will be no adjustment to his income if he follows the method of determining the arm's length price which has been agreed with the department[11].

Non-cooperative or low tax jurisdictions

18. One of the points which was agreed by the countries of the Group of Twenty (G-20) in their meeting in London on 2 April 2009 was

> "to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and

[9] Clause 256 of the DTC Bill.
[10] Clauses 58(2)(ii), 113(2)(k), 291(a)(c) and Twentieth Schedule of DTC Bill.
[11] Clause 118 of the DTC Bill.

financial systems. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information." [The Global Plan for Recovery and Reform, 2 April 2009]

19. One of the counter methods which has been employed by countries is that the taxpayer must apply transfer pricing principles to transactions between unrelated parties where such transactions involve a NCJ (e.g. Argentina, Brazil, and Chile). This has been provided in the DTC as detailed in para below.

Transfer pricing to apply if transaction is undertaken with another enterprise located in a prescribed jurisdiction

20. One of the measures proposed in the DTC is to define two enterprises to be associated enterprises by including a situation where they are associated with each other by virtue of any specific or distinct location of either of the enterprises as may be prescribed[12]. This would enable the prescription of a low tax or non-cooperative jurisdiction as such a location. An enterprise which deals with another which is located in such a jurisdiction would make both associated enterprises, and therefore, would make them subject to transfer pricing as regards the transactions entered into between them. It would also lead to increased disclosure requirements with regard to transactions conducted with entities located in these jurisdictions.

21. **Introduction of Branch Profit Tax on foreign companies in lieu of higher rate of taxation** – Currently, foreign companies are taxed at the rate of 42.2% (inclusive of surcharge and cess) while domestic companies are taxed at the rate of 33.2% (inclusive of surcharge and cess) plus a dividend distribution tax at the rate of 16.6% when they distribute dividend from accumulated profits. It is proposed to equate the tax rate of foreign companies with that of domestic companies by prescribing the rate at 30% and levying a branch profit tax (in lieu of dividend distribution tax) at the rate of 15%.

22. During evidence, the Committee asked as to whether the International Financial Reporting Standards (IFRS) have been considered while formulating DTC, the Ministry in their post-evidence reply to the said query stated as follows :

> "The Ministry of Corporate Affairs (MCA) is in the process of notifying the new Indian accounting standard which are converged with the IFRs (Ind-AS) with suitable modification. Under section 145 of the Income-tax Act, 1961, a taxpayer is allowed to compute income chargeable under the head "Income from other Sources" and "Profit and gains of business or profession" in accordance with either cash or mercantile system of accounting subject to the accounting standards notified under the Income-tax Act, 1961. Similar provisions are incorporated in Clause 89 of the DTC. As and when Ind-AS will be notified by the MCA under the Companies Act, 1956, the appropriate accounting standards under section 145 of the Income-tax Tax, 1961 or under clause 89 of the DTC will be

[12] Clause 124(5) (xiv) of the DTC Bill.

notified with relevant modification for the purpose of computing taxable income under the Income-tax Act, 1961 or the DTC.

Wealth Tax on international assets

23. The following have been added to the assets which are liable to wealth tax mainly in order to have a reporting requirement of assets held abroad:

(i) Bank account of any individual or HUF held in any bank outside India.

(ii) In case of other persons, a bank account held in a bank outside India and such account has not been disclosed in the books of accounts maintained by such person.

(iii) Any interest in a controlled foreign company.

(iv) Any interest in an unincorporated body (e.g. trust, partnership etc.) outside India[13].

Recommendations of the Standing Committee on Finance Incorporated in the Code

24. The Standing Committee on Finance in its earlier reports had emphasised the need for a regime wherein tax exemptions are minimal and to exceptional cases. Relevant extracts of those recommendations are as follows:

(i) Para 27 (52nd Report of the Standing Committee on Finance on Demands for Grants (2007-08) of Ministry of Finance (Department of Revenue).

"The Committee, therefore, feel that it is perhaps, high time that exemptions are reviewed and limited and that too quickly, as opportunities for raising additional sources through new taxes or higher tax rates are not unlimited and enhanced tax collections are the major contributors towards meeting the target set by FRBM Act for elimination of Revenue deficit. The Government should therefore expedite the move towards a regime wherein tax exemptions are minimal and confined to exceptional cases. The Committee also endorse the view that in the long run, exemptions may be limited to life saving goods, goods of security and strategic interest, goods for relief and charitable purposes and exemption for small scale industries."

(ii) Para 7 of the 60th Report of the Standing Committee on Finance on Demands for Grants (2007-08) of Ministry of Finance (Department of Revenue).

[13] Clause 113(2) of the DTC Bill.

"The reply furnished by the Ministry is silent on their recommendation regarding sunset clause on the tax exemptions applicable to the units in SEZs. The Committee would await the Government's response in this regard.

(iii) Para 5 of the 12th Report of the Standing Committee on Finance on Demands for Grants (2010-11) of the Ministry of Finance (Department of Revenue).

"In the context of shortfall in direct taxes collection, the Committee note with concern the huge amount of revenue lost to the exchequer by way of tax exemptions and deductions, which aggregated to more than Rs. 1,50,000 crores. The Department have submitted that the revenue foregone in respect of corporate income tax during the year 2009-10 increased to Rs. 79,554 crores, while the same for personal income tax was Rs. 40,929 crores. Revenue foregone on account of direct tax incentives / deduction given to export promotion schemes etc. amounted to a whopping Rs. 30,000 crores and more during this period. Facts are so evident that it requires no over-stating that tax concessions and exemptions provided in general have been huge and phenomenal, amounting to more than half of the total direct tax collections in 2009-10. If the aggregate exemptions in both direct and indirect taxes is taken into account, it works out to a massive Rs. 5,02,299 crore (2009-10), which is almost 80% of the total revenue collections. Such exemptions have been increasing, leaving an adverse impact upon revenue buoyancy.

The Committee would, therefore, recommend that while formulating the proposed Direct Taxes Code, the Government should review the present regime of tax exemptions and deductions, which is obviously loaded in favour of corporates and big tax payers at the expense of small tax payers and the salaried class. Thus, keeping in mind the fact that most of these exemptions have outlived their purpose, and in the light of the glaring facts cited above, it would be just and equitous to put in place a Policy on Exemptions, which would substantially reduce the percentage of tax foregone but at the same time encourage household savings, foster social security and is generally favourable to small tax payers. The revenue thus retrieved may be utilized to fund Government's developmental programmes, particularly in agricultural sector."

25. The action taken by the Ministry of Finance (Department of Revenue) on the above said recommendation is as follows :

> "Rationalisation of tax incentives has been attempted in the DTC by phasing out profit linked deductions and replacing them with investment linked deductions in the case of businesses. To maintain a minimum level of tax payment from all companies, the MAT rates have been kept at 2/3rd (i.e.@20%) of the nominal rate (of 30%). At the same time the rates have been moderated for all businesses by bringing them down to 30% as against the current overall rate of 33.2%. For individual tax payers, the tax deductions have been rationalised so that they are available for savings for social security i.e. for provident funds, superannuation funds, gratuity funds and pension funds".

New principles / concepts introduced in the Code

26. The following new principles / concepts have been introduced in the DTC Bill, 2010 :

Tax rates mentioned in Schedule to the Code

27. Under the Code, all rates of taxes are proposed to be prescribed in the First to the Fourth Schedule to the Code itself. This obviates the need for an annual Finance Bill if, there is no proposal to change the tax rates. The changes in the rates, if any, will be done through appropriate amendments to the Schedule brought before Parliament in the form of an Amendment Bill. Other amendments to the Code will also be through amendment bills.

Concept of financial year

28. Under the current Income Tax Act, 1961 the income earned in a year is taxed in the next year. The year in which income is earned is termed as 'previous year' and the following year in which it is charged to tax is termed as 'assessment year'. The use of the two expressions has caused confusion in both compliance and administration. The existing concept of assessment year has been dropped. Under the Code, all rights and obligations of the taxpayer and the tax administration will be with reference to the 'financial year'. This change will not change the existing system of deduction of tax at source and payment of advance tax in the year of earning of income and payment of self-assessment tax in the following year before filing of tax return.

Classification of income

29. All accruals and receipts in the nature of income, shall, in general, be classified into a 'special source' or an 'ordinary source'.

30. The special sources are sources of income specified in the Part III of the First Schedule. The income from these sources will be liable to tax at a scheduled rate on gross basis. No deduction is allowed for any expenditure and the gross amount is subject to tax, generally at a lower rate. This is the application of presumptive taxation. These 'special source' incomes have been made applicable to mainly non-residents as only that portion of their total income which is sourced from India, is liable for tax under the Code. The 'ordinary sources' of income apply to residents and non-residents carrying business through a permanent establishment in India and are calculated by computing the net income after deducting allowable expenditures from receipts.

31. A similar system exists in the current Act. However, it is not explicitly structured as the special source incomes are mentioned across Chapter XII (Determination of tax in certain special cases), Chapter XII-A (Special provisions relating to certain incomes of non-residents) and Chapter XII-B (Special provisions relating to certain companies).

32. The accruals or receipts relating to an 'ordinary source' will be further classified under one of the five different heads:

A. Income from employment
B. Income from house property
C. Income from business
D. Capital gains
E. Income from residuary sources.

Aggregation of income and carry forward of losses[14]

Ordinary sources[15]

33. A person may have many 'ordinary sources', the income from which would be classified under one of the heads of income as explained above.

(i) The first step will be to compute the income in respect of each of these sources. This could either be income or loss (negative income). For example, if a person carries on several businesses,

[14] Sub-chapter III of Chapter III of the DTC Bill.
[15] Clause 13 of the DTC Bill.

the income from each and every such business will have to be separately computed.

(ii) The second step will be to aggregate the income from all the sources falling within a head to arrive at the figure of income assessable under that particular head. The result of such computation may be a profit or a loss under that head. The aforesaid two steps will be followed to compute the income under each head.

(iii) The third step will be to aggregate the income under all the heads to arrive at the 'current income from ordinary sources'.

(iv) The fourth step will be to aggregate the current income with the unabsorbed loss at the end of the immediate preceding financial year, if any, to arrive at the 'gross total income from ordinary sources'.

34. If the result of aggregation is a loss, the 'gross total income from ordinary sources' shall be 'nil' and the loss will be treated as the 'unabsorbed current loss from ordinary sources' at the end of the financial year.

35. The 'gross total income from ordinary sources', so arrived, will be further reduced by incentives in accordance with sub-chapter I of Chapter III. The resultant amount will be 'total income from ordinary sources'.

Special Sources

36. A person may have many special sources. The first step will be to compute the income in respect of each of these special sources in accordance with the provisions of the Fourth Schedule. The income so computed with respect to each of such special sources shall be called 'current income from the special source'. The second step will be to aggregate the 'current income from the special source' with the unabsorbed loss from that special source at the end of the immediate preceding financial year, if any. The result of such aggregation shall be the 'gross total income from the special source'. If the result of aggregation is a loss, the 'gross total income from the special source' shall be 'nil' and the loss will be treated as the 'unabsorbed current loss from the special source', at the end of the financial year. The 'gross total income from the special source' shall be computed with respect to each of the special sources. The third step will be to aggregate the gross total income from all such special sources and the result of this addition shall be the 'total income from special sources'.

Total income

37. The 'total income from ordinary sources' will be aggregated with the 'total income from special sources' to arrive at the 'total income' of the taxpayer.

Losses

38. In order to simplify the provisions, the carry forward of losses under ordinary sources is allowed at the level of gross total income instead of at head level except in the case of capital loss, speculation loss, and loss from owning and maintaining horses for the purpose of horse racing.

39. The loss under the head 'Capital gains' shall be ring-fenced and such loss shall not be allowed to be set off against income under other heads. Similarly the loss from speculative business and from owning and maintaining horses for the purpose of horse racing will also be ring-fenced.

40. Losses will be allowed to be indefinitely carried forward for set off against profits in the subsequent financial years as against a restriction of carry forward for only eight years in the current legislation.

General Anti Avoidance Rule (GAAR)

41. Tax avoidance, like tax evasion, seriously undermines the achievements of the public finance objective of collecting revenues in an efficient, equitable and effective manner. Sectors that provide a greater opportunity for tax avoidance tend to cause distortions in the allocation of resources.

42. In the past, the response to tax avoidance has been the introduction of legislative amendments to deal with specific instances of tax avoidance. Since the liberalization of the Indian economy, increasingly sophisticated forms of tax avoidance are being adopted by the taxpayers and their advisers. The problem has been further compounded by tax avoidance arrangements spread across several tax jurisdictions. This has led to erosion of the tax base.

43. In view of the above and consistent with the international trend, a general anti-avoidance rule has been introduced in the DTC which will serve as a deterrent against such practices[16].

[16] Clause 123 of the DTC Bill.

Introduction of Investment linked and phasing out of profit linked deductions

44. The DTC proposes investment linked deductions for priority sectors. Profit linked deductions are being phased out in the Income Tax Act, 1961 and have also been dropped in the DTC. They and being replaced by investment linked deductions for specified sectors. This is for the following reasons:

(i) Profit linked deductions lead to distortions such as artificial creation of profits and transfer of profits from the non-exempt unit to the exempt unit. They erode the existing tax base by allowing firms to funnel profits, via transfer pricing, from an existing profitable company through the "tax holiday" company and, therefore, avoid paying tax on either.

(ii) They lead to a substantial amount of revenue being foregone. The revenue foregone on account of profit linked deductions for financial year 2008-09 was Rs.43122 crores. Firms have an incentive to close down and sell their businesses at the end of the tax holiday, only then to re-open as a "new" investment, thus gaining an indefinite tax holiday.

(iii) They cause a majority of the tax litigation. With foreign direct investment operating under double taxation agreements, in the absence of tax sparing, tax holidays simply lead to a transfer of tax revenue to the foreign country.

(iv) They impede efforts to give a moderate tax rate to other taxpayers as the higher taxes paid by others subsidize the lower tax rates of the profit linked deduction sectors. They tend to attract "footloose" investments that move away as soon as the tax holiday ends.

(v) They add to discretionary powers.

(vi) They strain the enforcement resources of the Department.

(vii) It has therefore been a consistent policy of the Government to phase out profit linked deductions. They do not explicitly target capital investment; tax holidays are a blanket benefit given to investors and are not related to the amount of capital invested or even the growth in investment during the period of the tax holiday. These could be linked together, for example, through minimum capital investment requirements to get the benefit of the tax holiday.

(viii) Complete withdrawal of such profit linked deductions has been proposed in the Direct Taxes Code (DTC). They are also being phased out in the Income Tax Act.

(ix) Instead of profit linked deduction, it has been proposed to provide investment linked deduction to priority sectors in the Income Tax

Act as well as the DTC. Investment linked deductions are performance based and, therefore, superior tax incentives. They target the incentive specifically to the capital investment. As a result, the cost-benefit ratio (in terms of additional investment generated per unit of revenue lost) is high.

Income from house property to be recognised on actuals.

45. The DTC proposes to tax only actual receipts and accruals from letting out house property. The determination of notional rent for computing income from house property has been a cause for much litigation. Internationally also, in most jurisdictions, income from house property is taxed on the basis of rent from letting out of property.

46. This simplifies the tax provision as currently under the Income Tax Act, notional rental value of house property (even if the house property has not been let out) is to be calculated and the higher of actual or notional is taken as the rent to be taxed.

Characterization of income of Foreign Institutional Investors (FIIs)

47. A foreign company is not allowed to invest in securities in India except under a special regime provided for Foreign Institutional Investors (FII)s. This regime is regulated by the Securities Exchange Board of India (SEBI) under the SEBI Regulations for FIIs. The regulations provide that an FII can make investment in specified securities in India. It has been proposed in the Code that the income arising on purchase and sale of securities by an FII shall be deemed to be income chargeable under the head 'capital gains'[17] and to reduce litigation on the issue of characterization of FIIs income.

Saving incentive instruments pruned to promote long term savings for social security

48. In order to channel savings incentives to long term savings for social security of the taxpayer during his non-working life, deduction of upto Rs.1 lakh has been provided for investments in approved provident funds, superannuation funds, gratuity funds and pension funds[18].

[17] Clause 314(141) of the DTC Bill.
[18] Clause 69 of the DTC Bill.

49. Investment in other financial funds such as equity linked mutual funds, bank fixed deposits and insurance plans have been excluded from this as they do not represent social security savings. Also, this rationalised tax treatment removes the tax bias for particular financial products so that they can be offered by the issuer based on their intrinsic merit rather than being based on tax arbitrage.

Resolution of disputes with Public Sector Undertakings (PSUs) -

50. In order to reduce litigation involving PSUs, it is proposed that no appeal shall lie to Appellate Tribunal, High Court and Supreme Court after the order of CIT (A). Instead, an appeal may be filed before the Authority of Advance Ruling and Dispute Resolution[19]. The order of the Authority shall be final and binding on both revenue as well as the public sector company. This will assist in the expeditious resolution of disputes between the Income Tax Department and PSUs.

Taxation of Non Profit Organizations and Trusts

51. The income of non-profit organizations whose activities are for public religious purpose is proposed to be exempt. As regards income of non-profit organizations set up for charitable purposes, it is proposed to levy a tax on their surplus (at the rate of 15%), after allowing

(i) all receipts of the month of March of the financial year to be carried forward if deposited in specified account under a scheme to be prescribed so that they can be spent by the end of the next financial year

(ii) a deduction of 15% of the surplus or 10% of the gross receipts, whichever is higher and

(iii) a basic exemption limit of Rs.1 lakh

Donations to these non-profit organizations (whose surplus is proposed to be taxed) will be eligible for tax deduction in the hands of the donor.

[19] Clause 256-267 (Chapter XVI) of the DTC Bill.

BROADER ISSUES

52. Before discussing the various points raised by the Committee and their specific observations/recommendations clause by clause (Part-II), the Committee's examination of certain broader issues may be dealt with in brief as follows :

Extent of simplification of the existing Income Tax Act, 1961

53. The Committee desired to know as to what extent the simplification of the existing Income Tax Act, 1961 has been proposed in the DTC Bill. In their written replies, the Ministry stated as under :

> "The Statement of Objects and Reasons as given by the Finance Minister on August 27, 2010 explains that the 1961 Income Tax Act was amended no less than 34 times resulting in "complexity in tax laws", and the inability on the part of the average tax payer to comprehend it. The new tax code has thus the object of revising, consolidating and simplifying the language and structure of Direct taxes Laws".

54. On being asked as to what structural changes has the Direct Taxes Code made in the existing Direct Tax Laws in order to make it simpler and better comprehensible, the Ministry in their written replies stated as under :

(a) It simplifies the language of the legislation by the use of direct, active speech, expressing only a single point through one sub-section and rearranging the provisions into a rational structure.

(b) Currently, the rates of tax for a particular year are stipulated in the Finance Act for that relevant year. In the DTC, all rates of taxes are proposed to be prescribed in Schedules to the Code, thereby obviating the need for annual finance bill, if no change in the tax rate is proposed. Tax rates are mentioned in the Finance Act (and not in the Income-tax Act) through Part I, II and III of First Schedule and Part IV for a particular year. The tax rates in the DTC are provided under Schedules I to IV. These are: The First Schedule: Rates of Income Tax; The Second Schedule: Rate of other Taxes; The Third Schedule: Rates for deduction of tax at source in the case of resident deductee; The Fourth Schedule: Rates for deduction of tax at source in the case of non-resident deductee.

(c) TDS rates on non-salary income are spread over Part II of the First Schedule to the Finance Act. Other TDS provisions are spread over 43 sections of the Act. All these tax rates, are consolidated into the

Third Schedule of the DTC and mentioned in a tabular format while TDS provisions are listed over 8 clauses.

(d) Currently in the Income Tax Act, 1961, there are 9 sections (section 115A to 115BBB) dealing with tax rates for non-residents on specific incomes. These have now been classified as special source incomes and the tax rate has been specified in Part III of the First Schedule of the DTC.

(e) Exemption provisions under the Income-tax Act [section 10)] are spread over more than 60 pages and more than 50 sub-clauses. All these provisions are mentioned in two Schedules of the DTC. The Sixth Schedule lists the income which is exempt and the Seventh Schedule lists the persons whose income is exempt.

(f) It strengthens taxation provisions for international transactions. In the context of a globalised economy, it has become necessary to provide a stable framework for taxation of international transactions and global capital. This has been reflected in the new provisions.

55. It was pointed out at the sitting of the Committee held on 18 November, 2010 that though DTC has simplified provisions, there is still scope for further simplification. For instance, one chapter may be made for the common man like salaried taxpayers. The Ministry in their written reply has informed the Committee as follows :-

> "Income-tax Act, 1961 has around 650 provisions and Wealth-tax Act, 1957 has more than 100 provisions. The DTC has 319 clauses. The DTC simplifies the language of the legislation. The provisions applicable to a small taxpayer are in the main clauses while complex computations and exceptions have been placed in Schedules. The use of direct, active speech, expressing only a single point through one sub-section and re-arranging the provisions into a rational structure will assist a lay person to understand the provisions of the DTC. The provisions relating to salary income have been grouped in a separate sub-chapter under the heading "Income from employment", which contains 4 clauses".

56. It has been pointed out that despite simplification of DTC, it does not appear to be user friendly. Salaried class of taxpayers, who form large chunk of Income Tax payers, may find it difficult to refer to the DTC as the provisions are under different sub-headings at different places. For example, (i) aggregation of income; (ii) incentives; and (iii) refunds. Further, it is found that there is no significant structural change in chapterisation in DTC and the design adopted in the five decades old Income Tax Act, 1961 is continued with.

57. Asked as to how the DTC be structured in such a way that it becomes user friendly and a single point reference, without the need for multiple cross reference, the Ministry in their written submission stated as follows :

> "As regards the average salaried taxpayer, aggregation of income issues would not generally arise as their income is only from the "Income from Employment". On an average, their other head of income could be loss on account of interest on loan deducted while computing income from self occupied property under the current head "Income from House Property". The DTC in fact simplifies this further since the deduction on account of interest from self occupied house property can now be claimed as a straight deduction (tax incentive) instead of computing it as a loss under head "Income from House Property". Also, the tax incentives allowable to salaried employee are computed and adjusted by the employer while arriving at the TDS liability. Therefore, in the vast majority of cases of salaried employees the salary TDS certificate issued by the employer is a proxy for the return of income. As these TDS returns and salary TDS certificates are now filed electronically by deductors, the government has taken the initiative to exempt small salaried taxpayers from filing returns of income. As regards the general comment about improving the user friendliness of the DTC, an attempt to provide simple flowcharts and guidelines for the main provisions will be made".

58. Responding to a specific query asked at the sitting of the Committee held on 18 November, 2010 regarding possibility of reduction of total number of 22 Schedules in DTC, the Ministry in their written reply has informed as below:-

> "The focus of DTC has been to simplify the structure of Act by incorporating the basic provisions in the main body of the legislation, Schedules have been included in the legislation in order to deal with complex situations or exceptions or elaborations of these provisions which would apply to a smaller sub-set of taxpayers. For example, certain incomes which do not form part of the total income have been mentioned in the Sixth Schedule and persons not liable to income tax have been specified in the Seventh Schedule.
>
> In certain legislations, for example, in the Companies Act, 1956 all Schedules (except Schedule XI and XII) of the Act can be amended by issue of notifications by the executive. However, Schedules in the Income Tax Act as well as in the DTC are an integral part of the legislation and any change can only be made through an Amendment Bill in Parliament".

59. While the clauses of tax laws have been reduced to 319 in DTC from the combined provisions of Income Tax Act and Wealth Tax Act (around 750), the schedules are increased to 22 from 14. The DTC is stated to be simplified, but the Schedules are ballooned and appear like a 'semi-Act'. For instance, fifth

schedule which deals with procedure for recovery of tax runs into 7 parts and 96 sections.

60. On being asked as to whether the Ministry can have a re-look into the schedules and cut down the numbers, the Ministry in their written replies stated as under :

> "The Fifth Schedule which deals with procedure for recovery of tax mirrors the Second Schedule in the current Income-tax Act which outlines a similar procedure. As the procedure includes provisions for confiscation of property it has to be a self contained Code. However, the suggestion regarding a relook into the Schedules and to cut down the number will be examined and attempted in consultation with the Ministry of Law".

61. On the question whether the Government has somehow failed to deliver on the basic promise of simplifying the provisions which could be comprehensible to the assessees, facilitate easier filing procedure so that the average taxpayer finds it convenient and include specific clauses to ensure accountability of tax authorities, the Ministry in their written submission stated as follows :

> "The use of direct, active speech, expressing only a single point through one sub-section and re-arranging the provisions into a rational structure will assist a lay person to understand the provisions of the DTC. Easier filing procedures are an ongoing initiative of the Income tax department under which two page return forms for salaried taxpayers (Saral and now Sahaj) and for small business taxpayers (Sugam) have been introduced besides the facility for e-filing returns of income. Similar initiatives would also continue under the new legislative regime".

62. Three main features of a tax system are: (i) it would be progressive (that is, it would place a larger burden on richer people); (ii) it would not discriminate between income earned in different ways; and (iii) it would be simple. Three principles enunciated by the Task Force on Direct and Indirect Taxes are efficiency (minimizing distortions in resource allocation), equity (progressiveness of effective tax rates), and effectiveness (of tax administration). On being asked as to where the DTC Bill, 2010 stands in achieving the principles of equity, simplicity and efficiency so as to ensure that no single principle is given overriding preference over others, the Ministry in their written replies submitted as under :

> The DTC is simple as it uses direct, active speech, expressing only a single point through one sub-section and the provisions are structured in a rational manner. For example,

(a) Currently, tax rates are mentioned in the Finance Act through Part I, II and III of First Schedule and Part IV for computing net agricultural income. Tax Deduction at Source (TDS) rates and provisions are spread over these Schedules and 43 sections of the Act.

All these tax rates, are consolidated into 4 Schedules (Schedule I to IV) of the DTC and mentioned in a tabular format. TDS provisions are listed in 8 clauses and 2 of these Schedules.

(b) Currently in the Income Tax Act, 1961, there are 9 sections (section 115A to 115BBB) dealing with tax rates for non-residents on specific incomes. These have now been classified as special source incomes and the tax rate has been specified in Part III of the First Schedule.

(c) Currently, section 10 of the Income Tax Act, 1961, details persons whose incomes are exempt as well as nature of incomes which are exempt. It contains more than 50 clauses and some clauses are further divided into several sub-clauses. The section runs into 60 pages.

All these provisions are mentioned in two Schedules of the DTC. The Sixth Schedule lists the incomes which are exempt and the Seventh Schedule lists the persons whose income is exempt. These cover 6 pages.

(d) Currently, section 10(23C) of the Income-tax Act has 16 provisos within the section which makes it difficult to read and comprehend. The DTC does not have a single proviso".

63. The Ministry further explained that :

"The DTC maintains a balance in applying the principles of Equity, Simplicity and Efficiency. It promotes equity by having progressive rates of personal income tax and a wealth tax on assets beyond a specified limit; it also maintains a moderate level of tax on corporate incomes by ensuring that no substantial exemptions are given to incomes in a particular sector and also through the provisions of Minimum Alternate Tax (MAT). By limiting the variety of special deductions, it promotes simplicity both in the language as well as in the implementation of the provisions. Both these factors promote efficiency as the tax administration can free up its resources to harness information technology in order to provide better taxpayer service as well as to ensure reporting of financial transactions for tax purposes".

Scope of Tax Disputes

64. When the Committee expressed their apprehension that tax disputes are likely to increase due to artificial, deeming and controversial provisions contained

in the Code coupled with wide ranging powers in form of GAAR, very low threshold for determination of associated enterprises, liberal re-opening of assessment provision etc., the Ministry replied as follows :

> "As regards non-resident companies, the comment is that the provisions relating to determination of place of effective management, determination of whether an asset situated in India has been indirectly transferred outside India, and the CFC provisions should be seriously examined from cost – benefit perspective, given that outbound investment from India is in a nascent stage and the likely double taxation not to mention the onerous compliance requirements is likely to be a deterrent. In this context, it may be pointed out that taxation of non-residents is a complex issue owing to globalization, the ease of transfer of capital between countries, the ease with which residence can be changed by incorporating companies in foreign jurisdictions, the increasing number of transactions between related entities within multinational corporations etc. These complexities are to be addressed by sovereign governments not just in the sphere of taxation, but also in company regulation, competition regulation, capital market regulation and banking and monetary regulation. Unlike 1961, when the current Income-tax Act was legislated, India is now operating in an increasingly globalized world. These complex issues are being faced and addressed by other countries too and the provisions with regard to place of effective management, indirect transfer of Indian assets outside India and CFC regulations are in line with what other jurisdictions have in place to protect their tax base, which is imperative in a regime of moderate tax rates. Absence of such provisions and rules would hamper India's attempts to preserve its tax base and to ensure that taxes owed to it are reported and paid in India.
>
> As regards resident companies, the issue pointed out is that business income is required to be determined separately for distinct and separate business, regardless of whether each such business enjoys any tax incentives and that given the manner in which distinct and separate business is defined, significant additional time, effort and cost is likely to be incurred. This issue has figured as a suggestion in the 44 annexures forwarded by the Standing Committee and in the Ministry's response (Refer Sr. No. 81 of Part B of response) it has been stated that the suggestion regarding modification of the definition of distinct and separate business would be considered.

Tax rates / slabs

65. According to Income Tax Act 1961, every person, who is an assessee and whose total income exceeds the maximum exemption limit, shall be chargeable to the income tax at the rate or rates prescribed in the Finance Act. Such income tax shall be paid on the total income of the previous year in the relevant

assessment year. The total income of an individual is determined on the basis of his residential status in India.

66. Revenue projections for the direct tax collection for financial year 2012-13 based on the tax rates proposed in the DTC :

DTC – REVENUE IMPLICATIONS FOR 2012-13

	Exemption Limits, Slabs & Tax rates		
Sr. No	**Income category**	**Income Tax Act, 1961 for income earned in FY 2011-12. (In Rs. lakhs)/ percentage (inclusive of surcharge & cess)**	**Proposed for DTC (2012-13) (In Rs. lakhs)**
1	PIT exemption limit	1.8	2
2	PIT first slab (10%)	1.8 to 5	2 to 5
3	PIT second slab (20%)	5 to 8	5 to 10
4	PIT third slab (30%)	>8	>10
5	Corporate tax (Including sur. & cess)	32.4%	30%
6	MAT rate on profits	20%	20%

II. Projections for direct tax collections:

	2011-12 (Budget Estimates)	Potential collection in 2012-13 at Existing Rates* of 2011-12 (A)	Loss due to lower DTC rates (B)	Estimated collection in 2012-13 (A – B)
CIT	3,59,990	4,37,603	32,415**	4,05,188
PIT	1,72,661	2,09,886	7,000***	2,02,886
Total	5,32,651	6,47,489		6,08,074
Growth		21.56%		14.16%

*Existing GDP growth of 14%, buoyancy 1.54 (Average of last five years excluding 2008-09) = 14 X 1.54=21.56%

**Reduction in collections due to lowering of tax rate from 32.4% to 30%

***Reduction on account of higher exemption limit and broader tax slab

67. Therefore, the projected collections for financial year 2012-13 at the rates proposed in the DTC would be Rs.6,08,074 crore approximately. This represents a fall of Rs.39,415 crore against projected collections if the current rates of tax were retained.

68. According to the Ministry by maintaining the MAT rate at 20% (as against corporate tax rate of 30%) and spreading its coverage to include SEZs, a further reduction in cash collections has been plugged. It will take more than a decade for profit linked deduction claims under the Income-tax Act to be totally phased out as taxpayers who are currently availing this incentive will be protected for the unexpired period of their claim. This phasing out of profit linked deduction in the

DTC over the next decade would make up for the initial shortfall through higher buoyancy in direct tax collections.

69. To a specific query raised at the sitting of the Committee held on 18 November, 2010 as to how the DTC addresses the issue of equity, the Ministry in their written reply has informed the Committee as follows:-

> "The DTC proposes moderate tax rates on a wide tax base. The tax base is proposed to be widened by rationalizing exemptions and deductions. Minimum Alternate Tax (MAT) is proposed to be levied on book profits, in case the taxable income works out to be less than 20% of the book profits of a company. Similarly a moderate rate of Wealth tax at the rate of 1% on wealth in excess of Rs.1 crore has been proposed. This would ensure that tax burden is shared equitably by all categories of taxpayers".

70. The Ministry further added that :

> "The proposed exemption limit of Rs.2 lakhs in the DTC is four times the per capita income. It ensure that an individual earning upto four times the per capita income is not subject to tax. Further, deductions have also been provided for interest on a loan for acquiring a house, for medical expenditure. Expenditure on education are also allowed before the exemption limit is applied. Further, deduction for long term savings is also allowed before computing the income subject to tax. This ensures that an overwhelming majority of citizens are not subject to direct tax on their income. Only 3 to 4 per cent of the population whose income is higher than that of the 'aam admi' is therefore subject to direct tax. Raising the exemption limit will erode the tax base substantially".

71. Further, the Committee desired to know as to whether the proposed slabs and the rates have taken into the inflationary trends in the economy, and whether there should be a built-in mechanism to cushion against inflation. In response, the reply of the Ministry is as under :

> "When compared with tax rates for the financial year 2005-06, the exemption limit as well as the tax slabs have more than kept pace with the increase in the rate of inflation (*based on the Consumer Price Index for urban non-manual employee) as can be seen from the Table below. The base which they will apply to for the proposed DTC year (2012-13) is an income of Rs.200000. In the current year (2011-12), the exemption limit proposed is Rs.180000 which is Rs.20000 more than the exemption limit of Rs.160000 which was in effect for income earned during the financial year 2010-11".

Financial Year	**Exemption limit**	**Exemption limit (of 2005-06) adjusted for inflation***
2005-06	Upto 100000	Upto 100000

2006-07	Upto 100000	Upto 104400 (4.4%)
2007-08	Upto 110000	Upto 110768 (6.1%)
2008-09	Upto 150000	Upto 116971 (5.6%)
2009-10	Upto 160000	Upto 126914 (8.5%)
2010-11	Upto 160000	Upto 142778 (12.5%)
2011-12	Upto 180000	Not yet available
2012-13*	Upto 200000	Not yet available

* Proposed

72. The Ministry further explained as under :

"As a first step towards achieving simplicity and stability, tax rates have been specified in separate Schedule to the Code rather than being mandated on an annual basis through a separate Central Act (Finance Act) as in the Income Tax Act. Over a period of time, after the enactment of the DTC, based on the experience gathered, a study would be undertaken as to whether tax slabs can be linked to the inflation index or increased by a fixed sum".

73. Details of number of income tax payers in the tax slabs of Rs. 0-5 lakh, Rs. 5-10 lakh, Rs. 10-20 lakh and beyond Rs. 20 lakh, as furnished by the Ministry in their written submission are given as under :

Estimated number of taxpayers (FY 2011-12)		
Slab	**Number (in lakhs)**	**Percentage of taxpayers**
0-5 lakh	288.44	89.0%
5-10 lakh	17.88	5.5%
10-20 lakh	13.78	4.3%
>20 lakh	4.06	1.3%
	324.16	100%

74. Similarly, the details regarding amount of tax collected under the existing rates and percentage of tax collected in each of the said slabs as furnished by the Ministry are given as under :

Estimation of tax collection in each slab (FY 2011-12)		
Slab	**(Rs. in crores)**	**Percentage of tax collected**
0-5 lakh	15,010	10.1%
5-10 lakh	21,976	14.8%
10-20 lakh	17,858	12.1%
>20 lakh	93,229	63.0%
	1,48,073	100%

75. On being asked about the number of tax payers who will be left out of tax net if the tax slab is increased to Rs. 3 lakhs and to Rs. 4 lakhs, the Ministry in their written information submitted the following details :

F.Y. 2008-09		F.Y. 2012-13	
Tax Slab	**Number of individual tax payers**	**Tax slab adjusted for inflation 10%**	**Number adjusted for increase in effective tax payers**
0-2 lakhs	2,02,72,445 (71.94%)	0-2.93 lakh	2,37,40,200 (71.94%)
0-3 lakhs	2,44,54,885 (86.79%)	0-4.4 lakh	2,86,40,700 (86.79%)
0-4 lakhs	2,59,45,923 (92.08%)	0-5.85 lakh	3,03,86,400 (92.08%)
Number of tax payers taken in sample size	2,81,76,624		
Total Number of effective taxpayers	3,01,01,260		3,30,00,000

Thus, adjusting for inflation, an exemption limit of Rs.5 lakh would leave about 90% of taxpayers out of the tax bracket i.e. approximately 2,97,00,000 out

of an estimated 3,30,00,000. The total collection from such people would be close to Rs.11000 crore. The expenditure involved in collecting the tax for a particular subset of taxpayer is not quantifiable as the administrative infrastructure deals with all taxpayers and tax returns. However, a substantial number of these taxpayers are those who have income mainly from salaries and therefore their tax is mainly deducted at source. Vide Finance Act, 2011, section 139(1C) has been inserted in the Income-tax Act empowering the Central Government to exempt class of taxpayers from filing return of income subject to conditions as may be specified. Individuals with total income upto Rs. 5 lakh (comprising salary income and savings bank account interest of up to Rs.10000) have been exempted from filing of income tax returns vide notification no.36/2011 dated 23rd June, 2011. The detail of their income as well as the tax deducted at source from their income is available with the Income Tax Department through the TDS returns filed by their employers. Therefore, there is minimal additional expenditure involved in collecting tax from such salaried employees. A similar provision is proposed to be provided under DTC.

Corporate Tax

76. The details in respect of Corporate tax payers on the basis of data for F.Y. 2008-2009 are as under : -

(FY 2008-09)				
SLAB	**Number of Tax Payers**	**Tax Payable as per return* (Rs. in crores)**	**Total Exemptions/Deductions (U/s 10, 10A, 10AA, 10B, 10BA and Ch VIA) (Rs. in crores)**	**App. Revenue foregone (Rs in crores) ((30% of (4))**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
0 to 100 Cr	463,507	44,016	68,430	23,200
100 Cr to 500 Cr	590	23,421	34,746	11,779
Above 500 Cr	186	54,558	82,287	27,895

**Sum of prepaid taxes and self assessment tax as reduced by refund.*

Wealth Tax

On being asked as to why the exemption limit of Rs. 1 crore for levy of wealth tax should be changed, the Ministry in their written submission stated as follows :

> "The current wealth tax regime of taxing only unproductive assets was introduced by amendments carried out in 1992 to the Wealth Tax Act, 1957 on the recommendations of the Chelliah Committee on tax reforms. The Chelliah Committee had suggested that in order to encourage taxpayers to invest in productive assets such as shares, securities, bonds, bank deposits, etc. and also to promote investment through Mutual Funds, these financial assets should be exempted from wealth tax. The Committee recommended that wealth tax should be levied on individuals, Hindu undivided families and companies only in respect of non-productive assets such as residential houses including farm houses and urban land, jewelry, bullion, motor cars, planes, boats and yachts which are not used for commercial purposes. The Committee further suggested that such tax should be at the rate of one per cent., with a basic exemption of Rs.15 lakhs. These recommendations were accepted in order to encourage investments in productive assets and discourage investment in ostentatious non-productive wealth.
>
> In the discussion paper and draft legislation released for public discussion in August, 2009, wealth tax was proposed to be levied on all assets including financial assets and the tax rate proposed was @ 0.25% after providing for a threshold limit of Rs.50 crore. Based on inputs received, a revised Discussion Paper was released in June, 2010 proposing wealth tax as an anti-avoidance measure in an integrated tax system of taxes in order to ensure the reporting of significant assets held by a tax payer and will be levied only on specified assets. Both under the Income-tax Act and DTC (i) one house or a plot of land up to 500 sq. mts. and (ii) commercial and rented properties (treated as productive assets) are exempted from tax. The threshold limit has therefore been kept at Rs.1 crore. Under the existing law, wealth tax is levied @ 1% above threshold of Rs.30 lakhs. Therefore, relief by way of increase in threshold from Rs.30 lakh to Rs.1 crore has already been provided".

<u>Policy on Tax exemptions / incentives</u>

77. Over the years, considerable efforts have been made to developing a tax reform strategy, which have broadly centered on bringing changes to the tax exemption level, tax rate structure, and broadening of the tax base.

78. Explaining about the tax reform strategy carried out in the last five years, the Ministry in their written replies submitted as follows :

> "The table below gives an overview of personal income tax exemption limits and slabs, corporate tax rate and Minimum Alternate Tax rate over the last five years".

Financial Year	Personal Income Tax exemption limits and slabs (including cess and surcharge) (for incomes below Rs.10 lakh and above Rs.10 lakh)			Corporate Tax Rate (including cess and surcharge)		Minimum Alternate Tax rate (including cess and surcharge)	
		10 lakh	10 lakh	crore	crore	crore	crore
2006-07	Upto 100000	Nil	Nil	30.6	33.66	10.2	11.22
	100000 – 150000	10.2	11.22				
	150000 – 250000	20.4	22.44				
	>250000	30.6	33.66				
2007-08	Upto 110000	Nil	Nil	30.9	33.99	10.3	11.33
	110000 – 150000	10.3	11.33				
	150000 – 250000	20.6	22.66				
	>250000	30.9	33.99				
2008-09	Upto 150000	Nil	Nil	30.9	33.99	10.9	11.33
	150000 – 300000	10.3	11.33				
	300000 – 500000	20.6	22.66				
	>500000	30.9	33.99				
2009-10	Upto 160000	Nil	Nil	30.9	33.99	15.45	17
	160000 – 300000	10.3	10.3				
	300000 – 500000	20.6	20.6				
	>500000	30.9	30.9				
2010-11	Upto 160000	Nil	Nil	30.9	33.22	18.54	19.93
	160000 – 500000	10.3	10.3				
	500000 – 800000	20.6	20.6				
	>800000	30.9	30.9				
2011-12	Upto 180000	Nil	Nil	30.9	32.4	19.05	20
	180000 – 500000	10.3	10.3				
	500000 – 800000	20.6	20.6				
	>800000	30.9	30.9				

79. The major tax reform strategy carried out over the last five years has been to phase out profit linked deductions and levy a Minimum Alternate Tax on corporates in order to expand the tax base and to strengthen the reporting of financial transactions through use of information technology and better enforcement of reporting and deduction of tax at source. The major profit linked deductions which have been phased out or been subjected to a Minimum Alternate Tax (MAT) are as follows:

(i) Provisions relating to exempting export profits from tax (s.80HHC, 80HHD, 80HHE and 80HHF) were phased out over a five year period from FY 2000-01 to FY 2004-05.

(ii) Exemption of profits from exports made from software technology parks (STPs) and Export Oriented Units (EOUs) has been phased out in FY 2011-12.

(iii) Levy of MAT on SEZ developers and SEZ units in FY 2011-12.

80. The Kelkar Committee urged the importance of tax expenditure analysis before any new exemptions and incentives are granted. It also suggested the use of tax rebate rather than exemptions.

81. Asked as to whether the Ministry considered the above-mentioned recommendation of the Kelkar Committee while granting exemptions / incentives in the DTC Bill, 2010, the Ministry replied as under :

> "Electronic filing of tax returns by companies has ensured a much higher level of monitoring and compliance and has, since 2005-06, also resulted in detailed analysis of revenue foregone (i.e. tax expenditure) on account of direct tax incentives which is presented in the annual budget documents. It is based on this analysis of revenue foregone on account of profit linked deductions that a policy decision regarding phasing out of profit linked deductions and levy of Minimum Alternate Tax on all companies has been proposed. Similarly, the recommendation of the Kelkar Committee regarding rebates and exemptions was that it is necessary to move towards a comprehensive tax regime by reviewing the various exemptions, deductions and rebates; this has been followed by rationalization of the savings deduction in the personal income tax".

82. <u>COMPARATIVE POSITION OF INCENTIVES / CONCESSIONS / DEDUCTIONS UNDER THE EXISTING ACT AND AS PROPOSED IN THE DTC BILL</u>

S. No.	Deductions in I.T. Act (ITA)	Corresponding incentive in Direct Tax Code (DTC)
1.	Profit linked deduction u/s 10AA for units in a Special Economic Zone (SEZ). It provides for deduction of 100% of profits and gains for first 5 years, 50% for next 5 years and 50% for subsequent 5 years subject to creation of reserve.	Investment linked deduction under the 12th Schedule for the business of manufacture or production of article or things or providing of any service by a unit established in an SEZ. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument). [The profit linked deduction under section 10AA of the ITA shall continue to be allowed under DTC, if the assessee sets up an SEZ unit on or before 31.3.2014]
2.	Profit linked deduction u/s 80-IA(4)(i) for infrastructure facility.	Investment linked deduction under the 13th Schedule for the business of developing, or operating and

S. No.	Deductions in I.T. Act (ITA)	Corresponding incentive in Direct Tax Code (DTC)
	It provides for deduction of 100% of profits and gains from such business for 10 consecutive assessment years (A.Ys.) out of 15 years. For infrastructure facility other than port, airport, inland waterway, inland port or navigational channel in the sea, deduction is provided for 10 consecutive years out of 20 years.	maintaining, any infrastructure facility. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument).
3.	Profit linked deduction u/s 80-IA(4)(iv) for generation, distribution or transmission of power (for businesses set up on or before 31.03.2012). It provides for deduction of 100% of profits and gains from such business for 10 consecutive AYs out of 15 years.	Investment linked deduction under the 13th Schedule for the business of generation, transmission or distribution of power. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument).
4.	Profit linked deduction u/s 80-IAB for undertakings in the business of developing of an SEZ. It provides for deduction of 100% of profits and gains from such business for 10 consecutive A.Ys. out of 15 years.	Investment linked deduction under the 12th Schedule for the business of developing an SEZ. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument). [The profit linked deduction under section 80-IAB of the ITA shall continue to be allowed under DTC, if the assessee's SEZ is notified on or before 31.3.2012]
5.	Profit linked deduction u/s 80-IB(4) for industrial units in J&K State (for businesses set up on or before 31.3.2012). It provides for deduction of 100% of profits and gains for first 5 years, thereafter 25% (30% where the assessee is a company) for next 5 years.	Not applicable as the deduction is no longer available under the ITA for businesses set up after 31.3.2012.
6.	Profit linked deduction u/s 80-IB(9) for undertakings engaged: (i) in commercial production of mineral oil (for contracts awarded on or before 31.3.2011) and (ii) in commercial production of natural gas under NELP-VIII or IV round of bidding for Coal Bed Methane blocks. It provides for deduction of 100% of profits and gains for 7 years.	Investment linked deduction under the 11th Schedule for the business of prospecting for or extraction or production of mineral oil or natural gas. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument).
7.	Profit linked deduction u/s 80-IB(9) for undertakings engaged in refining of mineral oil (for businesses set up on or before 31.3.2012). It provides for deduction of 100% of profits and	Not applicable as the deduction is no longer available under the ITA for businesses set up after 31.3.2012.

S. No.	Deductions in I.T. Act (ITA)	Corresponding incentive in Direct Tax Code (DTC)
	gains for 7 years.	
8.	Profit linked deduction u/s 80-IB(11A) for the business of processing, preservation and packaging of (i) fruits or vegetables (ii) meat and meat products and poultry, marine and dairy products. (for businesses set up on or after 01.04.2009) or from the integrated business of handling, storage and transportation of foodgrains It provides for deduction of 100% of profits and gains for first 5 years and, for next 5 years, 30% (companies) & 25% (firms).	Investment linked deduction under the 13th Schedule for the business of processing, preservation and packaging of fruits and vegetables. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument).
9.	Profit linked deduction u/s 80-IB(11C) for operating and maintaining a hospital located anywhere in India, other than the excluded area (for businesses set up on or before 31.3.2013). It provides for deduction of 100% of profits and gains derived from such business for first 5 consecutive assessment years.	Investment linked deduction under the 13th Schedule for the business of – (i) operating and maintaining a hospital in any area, other than an excluded area; or (ii) building and operating, anywhere in India, a new hospital with at least one hundred beds for patients and commences operation on or after the 1.4.2010. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument).
10.	Profit linked deduction u/s 80-IC for industrial units in States of HP and Uttarakhand (for businesses set up on or before 31.3.2012). It provides for deduction of 100% of profits and gains for first 5 years and thereafter 25% or 30%.	Not applicable as the deduction is no longer available under the ITA for businesses set up after 31.3.2012.
11.	Profit linked deduction u/s 80-ID for undertakings engaged in the business of hotel located in the specified district having a World Heritage Site (for businesses set up on or before 31.3.2013). It provides for deduction of 100% of profits and gains for first 5 consecutive years.	Investment linked deduction under the 13th Schedule for the business of building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government and commences operation on or after 1.4.2010. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument).
12.	Profit linked deduction u/s 80-IE for eligible undertakings in the North-Eastern States (for businesses set up on or before 31.3.2017). It provides for deduction of 100% of profits and gains for 10 consecutive years.	The profit linked deduction under section 80-IE of the ITA, shall continue to be allowed under DTC for businesses set up on or before 31.3.2012. Grand fathering of the profit linked deduction under section 80-IE of ITA, for businesses set up on or before 31.03.2017, is being considered by providing suitable clause under DTC.

S. No.	Deductions in I.T. Act (ITA)	Corresponding incentive in Direct Tax Code (DTC)
13.	(a) Profit linked deduction u/s 80JJA for the business of collecting and processing or treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure. It provides for deduction of 100% of profits and gains for first 5 years. (b) The Finance Act, 2011 (after the introduction of DTC Bill) has provided investment-linked deduction u/s 35AD of ITA for the business of production of fertilizer in India.	Investment linked deduction under the 13th Schedule for the business of generation, transmission or distribution of power. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument). (b) The business of production of fertilizer would be considered for investment-linked deduction under the 13th Schedule of DTC.
14.	Weighted deduction u/s 80JJAA of 30% of additional wages paid to new regular workmen in excess of hundred workmen employed during the year available up to 3 assessment years. The weighted deduction is available up to 3 assessment years.	Not provided.
15.	Investment-linked deduction u/s 35AD for one or more of the following businesses – (1) setting up and operating a cold chain facility; (2) setting up and operating a warehousing facility for storage of agricultural produce; (3) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. (4) building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government; (5) building and operating, anywhere in India, a new hospital with at least one 100 beds for patients; (6) developing and building a housing project under a scheme for slum redevelopment or rehabilitation, framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; (7) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and (8) production of fertilizer.	Investment-linked deduction has been provided under the 13th Schedule for the following businesses: (1) setting up and operating a cold chain facility; (2) setting up and operating a warehousing facility for storage of agricultural produce; (3) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. (4) building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government; (5) building and operating, anywhere in India, a new hospital with at least one 100 beds for patients; (6) developing and building a housing project under a scheme for slum redevelopment or rehabilitation, framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; The business of developing and building an affordable housing project was included u/s 35AD of ITA after the introduction of the DTC Bill. The same would also be considered for investment-linked deduction under the 13th Schedule of DTC.

S. No.	Deductions in I.T. Act (ITA)	Corresponding incentive in Direct Tax Code (DTC)
	It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument).	The business of production of fertilizer was included u/s 35AD of ITA after the introduction of the DTC Bill. The same would also be considered for investment-linked deduction under the 13th Schedule of DTC. It provides for the deduction of business expenditure including capital expenditure (other than any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument).
16.	Profit linked deduction u/s 80LA for certain incomes of Offshore Banking Units and International Financial Services Centre. It provides for deduction of 100% of profits and gains for first 5 years, 50% of profits and gains for next 5 years.	The profit linked deduction under section 80LA of the Income-tax Act shall continue to be allowed under DTC, if the assessee sets up business operation in the Offshore Banking Unit, or unit of an International Financial Services Centre, in the Special Economic Zone on or before 31.3.2014.
17.	The following deduction is available u/s 80P for income of co-operative societies:- (1) Deduction of 100% profits from the following activities – (i) carrying on the business of banking or providing credit facilities to its members if it is a primary agricultural credit society (PACS) or primary co-operative agricultural and rural development bank (PCARDB); (ii) a cottage industry; (iii) the marketing of agricultural produce grown by its members; (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; (v) the processing, without the aid of power, of the agricultural produce of its members; (vi) the collective disposal of the labour of its members; (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members; (viii) primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to a federal co-operative society, or the Government or a local authority; or a Government company. (2) Activities other than above – (i) Rs. 1 lakh for consumers' co-op societies;	(1) In case of the following co-operative societies, deduction of 100% profits from business of providing banking or credit facility to members (under clause 85) – (i) primary agricultural credit society (PACS); (ii) primary co-operative agricultural and rural development bank (PCARDB); (2)(i) In case of a Primary Co-operative Society, deduction of 100% profits from the following agriculture-related activities of a primary co-operative society is allowed under clause 86 – (a) purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; (b) the collective disposal of agricultural produce grown by its members; or of dairy or poultry produce produced by its members; and (c) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of material and equipment in connection therewith for the purpose of supplying them to its members.

S. No.	Deductions in I.T. Act (ITA)	Corresponding incentive in Direct Tax Code (DTC)
	(ii) Rs. 50,000 for others. (3) Any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society (100%). (4) Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities (100%). (5) In the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed Rs. 20,000, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.	(2)(ii) In case of a Primary Cooperative Society (PCS), income from any other activity is eligible for deduction of Rs. 1 lakh. (3) Income of a co-operative society from such activities and to such extent as may be prescribed, is also proposed to be exempt under para 47 of 6th Schedule (Income not included in the total income) read with clauses 10 and 18(1)(a).
18.	Deduction u/s 80C in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, children's education, etc. – up to a maximum limit of Rs. 1,00,000/-. Further deduction of upto Rs. 15,000 is allowed for payment of health insurance premia u/s. 80D.	Deduction under clause 69 is available up to Rs. 1,00,000/- for contribution to any approved fund to an account of the individual, spouse or any child of such individual. Deduction under clause 70, 71 and 72 upto Rs. 50,000 is available for – (i) premium for life insurance; (ii) premium for health insurance; (iii) children's education, respectively.
19.	Deduction u/s 80E in respect of interest on loan taken by an individual from any financial institution or any approved charitable institution for the purpose of pursuing his higher education or for the purpose of higher education of his relative — for the initial AY and 7 AYs immediately succeeding the initial AY or until the interest is paid by the assessee in full, whichever is earlier.	Deduction under clause 75 in respect of interest on loan taken by the assessee from any financial institution for the purpose of – (a) pursuing his higher education or (b) higher education of his relatives. The deduction is allowed in the initial financial year and next seven financial years or until the interest is paid in full, whichever is earlier.
20.	Deduction u/s 80DDB in respect of medical treatment, etc. of the amount actually paid or a sum of Rs. 40,000/- (Rs. 60,000/- for senior citizens), whichever is less.	Deduction under clause 76 in respect of amount paid for medical treatment of specified persons (self and family members, etc.) upto Rs.40,000 (Rs.60,000 for senior citizens).
21.	Deduction u/s 80U of Rs. 50,000/- in case of a person with disability and Rs. 1,00,000/- for severe disability.	Deduction under clause 77 of Rs. 50,000 in case of a person with disability or Rs. 1,00,000 for a person with severe disability.
22.	Deduction u/s 80DD of Rs. 50,000/- in respect of maintenance including medical treatment of a dependant who is a person with disability – Rs. 1,00,000/- in case of severe disability.	Deduction under clause 78 of Rs. 50,000 in respect of medical treatment, nursing or training and rehabilitation of a dependant person with disability or Rs. 1,00,000 for a person with severe disability.
23.	Deduction u/s 80G and 80GGA in respect of donations to certain funds, charitable institutions,	Retained in a modified form as deduction of contribution or donations to certain funds or non-profit

S. No.	Deductions in I.T. Act (ITA)	Corresponding incentive in Direct Tax Code (DTC)
	scientific research associations etc.	organisations under clause 79 read with the 16th Schedule.
24.	Deduction under section 80GG of any expenditure incurred in excess of 10% of total income towards payment of rent for own residence. The deduction is allowed upto a maximum of Rs. 2,000 per month or 25% of total income whichever is less.	Deduction under clause 80 of any expenditure incurred in excess of 10% of the gross total income from ordinary sources towards payment of rent for own residence. The deduction is allowed upto a maximum of Rs. 2,000 per month and is subject to such other conditions as may be prescribed.
25.	Deduction u/s 80GGB and 80GGC of any sum contributed by a person to political parties or electoral trusts.	Deduction under clause 81 in respect of contributions made to a political party or electoral trust upto 5% of gross total income from ordinary sources (or 5% of average net profit in the past 3 years for companies.)
26.	Deduction u/s 80QQB upto Rs. 3,00,000 in respect of royalty income, etc., of authors of certain books other than text-books.	Deduction under clause 83 upto Rs. 3,00,000 in respect of royalty income etc. of authors of any book which is a work of literary, artistic or scientific nature.
27.	Deduction u/s 80RRB upto Rs. 3,00,000 in respect of royalty on patents.	Deduction under clause 84 upto Rs. 3,00,000 for royalty income from patents.

Observations/Recommendations

83. When the present Income Tax Act was enacted way back in 1961, the per capita income of this country was extremely low. During the course of five decades of the working of the Income Tax Act, the national per capita income has increased multifold, widening the scope for taxing various incomes. At the same time, the absolute number of poor has also increased manifold, warranting much larger government outlays. The aspirations of the people for better living standards and their expectation from government to deliver the same has also simultaneously increased. It is therefore, necessary that these challenges in a growing economy and a developing society are kept in mind, while formulating a new Direct Tax Law.

84. A Direct Tax by definition is a levy on the incomes, profits and wealth earned and generated by individuals and entities. Thus, a direct tax by its very nature and scope cannot be imposed on everybody. It has necessarily to be a focussed levy which should reflect and tap the rising incomes and prosperity in a growing economy. The tax rates and structure should therefore be tailored in a way that will ensure sufficient buoyancy and dynamism. As the economy expands and diversifies, the tax policies cannot remain caught in a time-warp. Ways and means of augmenting revenue would have to be found not merely by broadening the base but also by deepening the trunk to tap both potential as well as concealed incomes and wealth. In this regard, there are three distinct categories of income, which require to be tapped or brought to book, namely (a) untaxed/non-taxed income; (b) potential income; (c) concealed income.

85. On the whole, the Committee would expect the tax policy and procedures to be fair, just and equitous, bringing fiscal stability at least over the medium-term, obviating the need to make changes in rates structure etc. during every Budget. Fiscal stability together with certainty will no doubt go a long way in sustaining economic growth and development. Needless to say, governance standards would, in the final

count, determine the efficacy and the credibility tax policies carry with taxpayers.

86. The Committee find from the information made available that tax collected in the income slab of 0-10 lakh is Rs. 21,094 crore and the total number of taxpayers is about 2.76 crore; while the corresponding figures for the income slab of 10-20 lakh is Rs. 10,185 crore with only 3.35 lakh taxpayers; the same for the more than 20 lakh income slab is Rs. 53,170 crore tax collected with a mere 1.85 lakh taxpayers. The Committee further find that in the income slab of 0-2 lakh, the number of taxpayers is around 2.02 crore, which decreases to 56.73 lakh in the next income slab of 2-4 lakh. With regard to the percentage of taxpayers in different income slabs, it is 89% (0-5 lakh), 5.5% (5-10 lakh), 4.3% (10-20 lakh) and 1.3% (above 20 lakh). On the corporate tax side, the tax collected in the slab of 0 to 100 crore is Rs. 44,016 crore, Rs. 23,421 crore in 100-500 crore slab; and Rs. 54,558 crore in the above 500 crore slab. The extent of revenue foregone for the above slabs has been found to be Rs. 23,200 crore, Rs. 11,779 crore and Rs. 27,895 crore respectively. The figures mentioned above only seek to confirm the view that the tax structure and the prevailing tax regime is regressive – both for individual as well as corporate tax payers. The Committee desire that the character of the tax regime should change and it should be made more progressive. This would entail greater relief for small taxpayers – both individuals and corporate and moderately higher rates for taxpayers in the higher bracket.

87. The Committee find it astonishing that almost 90% comprise of individual taxpayers in the 0-5 lakh income slab without commensurate tax yield; which translates into nearly 3 crore assesees. In a belated recognition of this paradox, the Department has exempted taxpayers in the lower income slab (0-5 lakh) from filing tax returns, thereby reducing the Department's processing burden. The Committee find it absurd that the Department should diffuse their energies and spread their resources thin over handling such a large number of individuals with low income potential. The argument that more taxpayers have to be brought within the tax net for widening the tax base can hold water only to the extent that this

approach brings in more taxpayers and tax revenue from the higher income brackets, rather than simply adding to the numbers in the lower segments.

88. Keeping in view the inflationary trends in the economy and the imperative to leave more disposable incomes in the hands of individual tax payers, particularly those in the lower income bracket, the Committee would recommend that the tax slab attracting 'nil' rate, that is, full exemption from tax on income should be raised to three lakhs from the proposed two lakhs. Higher exemption limit may be considered for women and senior citizens. The age for senior citizens should be relaxed from 65 years to 60 years. As reasoned earlier, higher exemption limit would go a long way in minimising the compliance and transaction costs of the Income Tax Department, which can now focus their attention and re-orient their resources on the higher income groups, untaxed or concealed incomes, and categories and sectors that are avoidance or evasion prone. The revenue gap, if any, could be easily bridged by way of stringent measures to curb and bring to book unaccounted money and through realisation of huge tax arrears and by way of savings from the proposed transition to the investment-linked incentive / exemption regime.

89. Thus, in the light of reasons cited above and in pursuance of the well-recognised and widely accepted rationale of moderate tax rates inducing better tax compliance and with a view to giving some relief to the small tax payers, the Committee would recommend the following revised tax slabs :

Slab (lakhs)	Tax rate
0-3	Nil
3-10	10%
10-20	20%
beyond 20	30%

90. The Committee note that the Direct Taxes Code proposes to tax shareholder funds at corporate tax rate of 30% for life insurance companies as against income being taxed currently at 12.5% (plus applicable surcharge). As, higher tax rate may weaken the insurers' ability to fund capital-intensive projects including infrastructure and may also discourage promoters from investing in life insurance sector involving high risk and

low returns, the Committee would recommend that the present tax rate of 12.5% applicable to life insurance companies may be raised to 15% instead of the proposed 30%.

The Committee do not recommend any change in the proposed rate of 30% corporate tax for companies. It is expected that the effective tax yield for companies will approximate to the nominal rate with the proposed transition to focussed investment-linked incentives / exemptions.

91. The Committee note that almost every year, the exemption limit is being tinkered with, albeit marginally. This, however, does not have any linkage with the price index or the growing inflationary trend. The Committee would, therefore, desire that there should be a built-in mechanism embedded in the statute itself based on Consumer Price Indices, whereby the tax slabs would be automatically and periodically adjusted for inflation. This would bring inherent stability in tax rates and structure, while minimising the burden of tax planning. Such a tax regime based on moderate rates would not only bring fiscal stability but also lead to much higher compliance and revenue collections in the long run.

92. The Committee note that in the year 2009-10, the wealth tax collection was to the tune of Rs. 505 crore and the same for the subsequent year 2010-11 was Rs. 682 crore; whereas the total personal income tax collection during this period was Rs. 1.32 lakh crore and Rs. 1.45 lakh crore respectively. It is thus evident that the extent of wealth tax collection, both in absolute terms and relative to personal income tax collection is rather measly. Under the existing law, the wealth tax is levied @ 1% above threshold of Rs. 30 lakhs. Both under the present Income Tax Act and the Direct Taxes Code, one house or a plot of land upto 500 Sq. Metres and commercial and rented properties (treated as productive assets) are exempted from wealth tax. The Direct Tax Code proposes exemption of wealth tax upto Rs. 1 crore and an uniform levy of 1% above this ceiling. The Committee are of the view that the proposed ceiling of Rs. 1 crore is unrealistically low, considering the inflationary trends in the economy and the sky-rocketing prices of real estate, which compel even the middle classes to buy residential properties at exorbitant prices. An individual

having a small two bedroom tenement in a metro city for his own living cannot be considered on the same footing with another individual owning a mansion. The Committee, therefore, believe that the wealth tax ceiling should be substantially increased to Rs. 5 crore to reflect the current realities, and beyond that limit, tax should be payable on slabs basis. In this context, it would be appropriate to refer to media reports that indicate as to how the rich in Europe have offered to pay more tax on their wealth. Thus, with a view to calibrate the burden of wealth tax and to incentivise compliance, the Committee would recommend taxation of net wealth on slabs basis so that the 'wealth' of the nation effectively comes under the umbrella of the tax department. The suggested slabs for this purpose are as follows:

Net Wealth (in Rs. crore)	Percentage of Wealth Tax
0-5	Nil
5-20	0.5%
20-50	0.75%
50 and above	1%

The Committee would also recommend that a built-in mechanism may be devised for indexing of wealth tax rates.

93. The issue relating to exemptions and incentives for both individuals and companies has been dealt with and commented upon in the respective Chapter in Part II of the Report. In principle, the Committee endorse the proposed transition to investment-linked incentives/exemptions with the focus on crucial sectors of the economy. Area-based incentives may be considered on investment linked basis. It however needs to be emphasised that the general principle should be that 'all incomes and profits are to be taxed; exemptions, if any, should be treated as a dynamic variable, while ensuring that each exemption serves an economic purpose.

94. As regards the tax law being simple and comprehensible, the Committee find that the bulkiness of the statute has been sought to be reduced by creating large number of Schedules containing detailed provisions similar to the clauses in the main body of the Bill, creating more confusion than clarity, which may also compound the problems for the

courts to interpret. The arrangement of chapters and sequence of clauses lack coherence. The Committee observe that the purpose of simplicity is not served by transferring substantive provisions to the Schedules, which may weaken the main clauses and also require frequent cross-referencing. Similarly, the Committee note that some definition provisions like Clause 314 have been sequenced towards the end of the Code, rather than at the very beginning as per established practice. The Committee therefore, desire that the Ministry should have a re-look at this structure and ensure that Chapters/clauses are self-contained and easy to comprehend and make use of. The Committee would like the structure and content of Income Tax law to be more user-friendly.

95. The concept of classification of income requires that income has first to be classified and then computed under the various heads. The Direct Taxes Code does not provide a classification provision under different heads as to what kinds of income are classified to fall under a particular head to be computed in accordance with the provisions contained thereunder. For example, what is proposed to be computed under the head 'income from house property' is the 'income from letting' and not 'income from house property'; and, capital gain as 'income from transfer' and not as 'capital gains arising from' as classified under the enabling Clause. As computation provisions for a specific Head have no independent existence without the 'charging section, it is necessary that the same be suitably addressed in the structure of the Code.

96. Some very stringent provisions relating to international taxation like CFC, GAAR, Branch Profit Tax and revised Transfer Pricing regulations have been proposed in the Code, which have been criticised and fears expressed in various quarters about the unfettered discretion these provisions vest in the tax authorities. The Committee desire that the genuine apprehensions of stakeholders should be constructively addressed while carrying out amendments in the Code.

97. The Committee note that the Direct Taxes Code proposes to introduce the General Anti Avoidance Rules (GAAR) for the first time in the statute book with a view to plug tax avoidance, as this practice is

economically undesirable and fiscally inequitable. The stated objective behind this proposal is to prevent a tax payer from using legal construction or transactions to gain undue fiscal advantage. This new anti-avoidance proposal is thus expected by the Government to ensure economic efficiency and fiscal justice. The GAAR proposals seek to empower the Income Tax Authorities, namely the Commissioners to invoke the applicability of the provisions and shifts the onus to the taxpayer. The Ministry have stated that appropriate guidance for applying these provisions will be provided to tax authorities through guidelines. The Committee however find that some serious concerns have been expressed by a range of stakeholders on the GAAR proposals.

98. In view of the apprehensions expressed by different stakeholders on the applicability of GAAR proposals, the Committee would recommend that the Ministry and the CBDT should seek to bring greater clarity and precision to the scope of the provisions. The provisions to deter tax avoidance should not end up penalizing tax-payers, who have genuine reasons for entering into a bonafide transaction. Further, the onus of proving tax avoidance should rest with the Department and not with the tax payer. It has been proposed that the orders of the Commissioner invoking GAAR provisions will be subject to approval of Dispute Resolution Panel (DRP) which is a collegium of three Commissioners of Income Tax. Since this is a purely departmental body, it will be fair and just, if the review is done by a more independent body. Suitable grandfathering provisions may be made to protect the interest of the tax- payers who have entered into structures / arrangements under the existing law. Uncertainties with regard to applicability of tax treaty provisions should be removed so that India's credibility as a reliable treaty partner is not affected. The proposals should not lead to any fiscal uncertainty or ambiguity. It should be ensured that any of the proposals does not pave the way for avoidable litigation, which is already at a very high level in tax matters.

99. The GAAR proposals may be amended accordingly and the guidelines framed keeping in view the afore-stated concerns. The

Committee desire that these guidelines should be laid in Parliament along with the duly amended Direct Taxes Code Bill.

100. Some of the definitions of terms connected with the provisions mentioned above relating to international taxation and anti-avoidance that have been introduced in the Code are found to be open-ended and ambiguous, leaving scope for avoidable litigation. The Committee therefore desire that the Ministry should review the relevant clauses governing these proposals with a view to circumscribing and minimising the extent of discretionary powers made available to the tax authorities by way of clear-cut rules and regulations. The above provisions have also been specifically dealt with separately under the respective Chapter (Part-II).

101. The Direct Taxes Code has missed an opportunity to incorporate certain new features in the proposed tax regime of the Country which would make it make more tax payer friendly vis-à-vis the existing tax system. The aspect of accountability of assessing officers was not present in the existing tax administration of the Country. A negative fallout of the absence of accountability was that more often than not over-zealous assessing officers made exaggerated assessments and raised additional demands without sufficient grounds. This has been the major reason for complaints of harassment and unwarranted tax litigation. The Committee had commented on this aspect in their recent report on the Demands for Grants (2011-12) of the Department of Revenue. The Committee, therefore, desire that this lingering issue is appropriately addressed in the Code. With a view to enforcing accountability of the Department, the unreasonable tax demands raised and adjudicated, if finally quashed at higher levels, should be adversely reflected in the career dossier of the concerned officials. Proper disciplinary action should be taken against such officials responsible for irrational assessments.

102. The Code does not provide for tax consolidation of group entities. Advanced tax jurisdictions across the world allow tax consolidation at the option of the taxpayer. As tax consolidation regime seeks to eliminate multiple levels of taxation of income generated within a group, reduce

compliance costs and lower the effect of tax incidence on the competitiveness of corporate groups, the same may be considered for inclusion appropriately.

103. With a view to evaluating tax policy and effectiveness thereof, it is proposed that Tax Impact Assessment may be conducted periodically to ensure that tax policies and reforms are meeting their objectives. For this purpose, the Government should consider greater use of sunset clauses or a trigger provision in the statute for an evaluation. Thus, where policies or reliefs or exemptions are not meeting the original objectives, they will be automatically reviewed.

104. The Committee are also concerned about the extensive rule-making powers provided in the Code. The Committee find that there are around 200 clauses in the Code which expressly leave scope for rule-making. The obvious reason for this enablement is that it is procedurally easier to amend the rules than the main clauses, which can be amended only with Parliamentary approval. The Committee are of the view that such extensive rule-making powers would compromise the supreme authority of Parliament. It is therefore necessary that a fair balance is maintained in this regard between executive decision making/delegated legislation and Parliamentary oversight. The Committee would therefore recommend that the extensive rule-making powers presently proposed in the Code is curtailed, so that substantive matters conferring discretionary powers to tax authorities and matters impinging on vital taxpayer-interest are brought in the Code itself.

105. Considering the plethora of litigation stifling the Income Tax Department, the Committee would recommend that the Department should consider setting up special courts comprising of experts to dispose of cases in a 'fast track' manner.

106. In a nutshell, the Committee would like the following essential pre-requisites/guiding principles to be considered and incorporated while revising the Direct Taxes Code Bill :

(i) Moderation in tax rates for individual tax payers with emphasis on voluntary compliance;

(ii) Smooth transition to investment-linked exemptions/incentives with focussed coverage;

(iii) Ensuring tax buoyancy by tapping high capacity / income and evasion-prone segments; newer forms of taxation like expenditure tax to be explored; wealth tax to be levied on slabs basis;

(iv) Deductions for individual tax payers to be focussed on long-term needs like social security;

(v) Re-orienting departmental resources towards high-capacity as well as avoidance/evasion prone categories/sectors;

(vi) Gearing up of departmental machinery to bring to book unaccounted money/concealed income on fast-track basis;

(vii) Tax-payer friendly measures such as quicker refunds, faster assessment, grievances-redressal etc.;

(viii) Simplicity and comprehensibility of both structure and content-making the statute more user friendly;

(ix) Avoiding open-ended and generic definition of terms particularly dealing with provisions of stringent nature; Making the terms as precise and lucid as possible;

(x) Enabling provisions to realise tax arrears in time bound manner;

(xi) Minimising scope of discretionary powers of department and circumscribing the same by way of clear-cut and unambiguous rules; Unfettered powers not to be conferred on authorities;

(xii) Reducing scope of litigation as far as possible by imparting stability and certainty to the applicability of provisions.

(xiii) Maintaining uniformity in 'grandfathering' provisions so that the available benefits for different categories under the existing Act are phased out in a uniform and non-discriminatory manner ensuring smooth transition to DTC provisions;

(xiv) Accountability of tax officials – protection against high-pitched assessments;

(xv) Strengthening the existing mechanism of income tax surveys to improve tax compliance;

(xvi) Modernisation and computerisation of all tax operations; equipping the Department with men and material to carry out the tasks assigned.

The clause-wise details and the Committee's observations/recommendations thereon have been dealt with under respective chapters in Part-II of the report.

PART – II

CLAUSE BY CLAUSE EXAMINATION

CHAPTER - I - BASIS OF CHARGE

1.1 The apportionment of fiscal jurisdiction amongst sovereign States is basically done on the basis of source based taxation and residence based taxation with respect to various classes of income. The choice of choosing either of the two rules or a combination of both depends upon specific macro economic objectives to be achieved by the State. The residential status for individuals under the Code is to be determined on the basis of physical presence in India. The relaxation from 60 days test that was provided to NRIs in the existing Act has been taken away in the Code. This relaxation is relevant to those NRIs who frequently visit India for attending social functions, family events, management of their Indian assets, etc.

1.2 The residency test for companies is usually decided on the basis of incorporation (legal seat) or location of management (real seat) or a combination of the two. The existing tax regime prescribes that a company may be considered as resident in India if it is incorporated in India or its management and control are wholly situated in India. The Code has proposed 'place of effective management' (POEM), threshold for determining residency of foreign company. As per the OECD Model Tax Convention on Income and Capital 2010, 'place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are, in substance, made. An entity may have more than one place of management, but it can have only one place of effective management at any one time.

Clause 4 – Residence in India

1.3 Clause 4 (1) of the Code deals with residency of Individuals.

4(*1*) An individual shall be resident in India in any financial year, if he is in India—

(*a*) for a period, or periods, amounting in all to one hundred and eighty-two days or more in that year; or

(*b*) for a period, or periods, amounting in all to—

(*i*) sixty days or more in that year; and

(*ii*) three hundred and sixty-five days or more within the four years immediately preceding that year.

(*2*) The provisions of clause (*b*) of sub-section (*1*) shall not apply in respect of an individual who is—

(*a*) a citizen of India and who leaves India in that year as a member of the crew of an Indian ship; or

(*b*) a citizen of India and who leaves India in that year for the purposes of employment outside India.

1.4 **Provision as per the existing Act**

6. (*1*) An individual is said to be resident in India in any previous year, if he—

(*a*)is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(*b*) [* * *]

(*c*) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

[*Explanation.*—In the case of an individual,—

(*a*) being a citizen of India, who leaves India in any previous year [as a member of the crew of an Indian ship as defined in clause (*18*) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purposes of employment outside India, the provisions of sub-clause (*c*) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

(*b*) being a citizen of India, or a person of Indian origin within the meaning of *Explanation* to clause (*e*) of section 115C who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (*c*) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and [eighty-two] days" had been substituted.]

1.5 Bombay Chartered Accountants Society has suggested the following changes in this Clause:

> As not to put NRIs to hardship by becoming Indian residents, they should be granted relief by increasing the period of stay to 181 days in a financial year. It is suggested that the relief available to NRIs under the ITA be continued in the DTC.
> In order to have clarity, it is suggested to provide that the day of arrival be considered as 'in India' and day of departure be considered as 'outside India'

1.6 The Ministry have disagreed with the change on the following grounds:

> "Through Explanation to sub-section (1) of section 6 of the IT Act, the conditions of sixty days was relaxed to 182 days by Finance Act, 1994. As a result a non-resident Indian (i.e. a citizen of India or a person of Indian origin) who visits India in any year and does not stay for more than 181 days in the financial year, does not lose his non-resident status. However, over a period of time it has been noticed that this provision is being misused by high net worth individuals who make huge investments abroad, manage to stay in India for a period not exceeding 181 days. By so doing, they avoid tax in India on the income which accrues outside India. With a view to curb this misuse, the relaxation of 182 days in the case of NRI being outside India have not been provided in the DTC.
>
> Further, the exclusion of this clause is necessitated by the situation where the provision is used to plan their stay in two or more countries in such a manner that the person does not become 'resident' of any country. This results in 'double-non taxation' i.e. the person does not pay taxes anywhere. Therefore, this is an anti-avoidance measure brought to prevent misuse of the non-resident Indian status. When a large majority of citizens pay tax, there is no economic justification to exclude a specified category of persons even though they have a substantial nexus with the territory of India and are using public goods funded by taxpayers.
>
> So far as the suggestion for reckoning the period of stay is concerned, the period of stay is counted with reference to the immigration stamp on passport of the person".

1.7 ICAI has suggested that Section 4(1)(b)(i) may be re-worded as follows:

> "(b) for a period, or periods, amounting in all to -
>
> (i) NINETY days, or more, in that year, and"

1.8 The Ministry have replied that there is no change in the basic criterion for an individual to be resident in India . Both the IT Act, 1961 as well as the DTC provide that an individual shall be resident in India if he is in India in any year for 182 days or more. If he is in India for less than 182 days in any year he shall be considered to be resident in that year if he remains in the country for 60 days or more in that year and for 365 days or more in four years preceding that year. This is a settled position. Hence there is no justification for altering the same.

1.9 **The Committee observe that test of residency in the Code for individuals is on the same lines as the existing Act. The only difference is that the relief granted to NRIs for stay upto 182 days in a year in the existing Act is not**

included in the Code. Accordingly, NRIs will lose their non-residential status if their stay in India exceeds 60 days in a year. This relaxation is relevant to those NRIs who frequently visit India for attending social functions, family events, management of their Indian assets etc. The Government of India through Ministry of Overseas Indian Affairs has been following the policy of welcoming NRIs to invest in India. The Committee are therefore of the view that the proposed 60 days stay for NRIs to retain their non residential status may be a little too stringent which may act as a hurdle to building a long term mutually beneficial relationship between India and its diaspora. The Committee, therefore, recommend that the period of stay for NRIs to retain their non-resident status may be restored to the existing 182 days, subject to two conditions, namely (i) each person claiming NRI status should simultaneously indicate the tax jurisdiction in which he is resident and, (ii) that all cases of fraud should be severely dealt with and nobody is allowed to become a global non-resident. Clause 4(1) of the Code may accordingly be amended to incorporate the suggested relief to NRIs.

1.10 Clause 4(3) of the Code deals with residency of Companies.

4 (*3*) A company shall be resident in India in any financial year, if—
(*a*) it is an Indian company; or
(*b*) its place of effective management, at any time in the year, is in India.

314(*192*) "place of effective management" means—

(*i*) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(*ii*) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions:

1.11 **Provision as per the existing Act**

6 (3) A company is said to be resident in India in any previous year, if-
(i) it is an Indian company; or
(ii) during that year, the control and management of its affairs is situated wholly in India.

1.12 The Committee has received the following suggestions for amending this clause:

(a) The provision of DTC 2010 for determining the residential status of the company may be restored in line with the provision of the Act or alternatively, the company should be resident in India only in a case where, by habitually taking the strategic decisions in India, the company is effectively managed in India. The place of effective management of a company should be wholly situated in India in order that the company is regarded as a resident in India, in which case the words 'any time in the year' would be rendered redundant and hence may be omitted. In other words, the provisions of sub-clause (3) of clause 6 of the Act should be retained in DTC 2010.

The Code should at least provide for 'tie breaker' rules aligned to internationally accepted principles so that a company is able to arrive at its sole state of residence (to the exclusion of residence in any other country).

(b) The change in the definition for determining the residence of a company seems unintended and way beyond the mischief that is sought to be corrected. In this respect, considering the CFC rules are also being promulgated, which could cover such cases, there seems to be very little incentive to consider a change in the conditions for a company to be considered as a resident in India. (CII)

(c) More than one Place of Effective Management (PoEM) - while the stated intention was to adopt an internationally recognized concept of PoEM, the proposed definition under the DTC is not in line with this intention. As per the OECD model convention 2008, PoEM is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are, in substance made. However, the manner in which PoEM is defined under the DTC, it could result in a company having PoEM at various locations where the company has its executive directors or officers. The definition fails to recognize that an entity may have more than one place of management, but it can have only one PoEM. This is also apparent from the CFC rules, which expressly specify that PoEM can be located in two or more countries.

Further, guidelines may be issued in the form of FAQs covering specific instances / situations to help determine whether or not a PoEM is situated in India. (ASSOCHAM)

(d) The said sub-sections may be re-worded as follows :

Section 4(*3*) " A company shall be resident in India in any financial year, if—

(*a*) it is an Indian company; or

(*b*) its place of effective management, at any time in ~~the~~ THAT year, is in India. *(ICAI)*

1.13 The reply of the Ministry on each of the above said suggestion is as follows :

"(a) Generally, the test of residence for foreign companies is the 'place of effective management' or 'place of central control and management'. At the same time, it is noted that the existing definition of residence of a company in the Income Tax Act, 1961 based on the control and management of its affairs being situated wholly in India is too high a threshold.

'Place of effective management' is an internationally recognized concept for determination of residence of a company incorporated in a foreign jurisdiction.

Most of our tax treaties recognize the concept of 'place of effective management' for determination of residence of a company as a tie-breaker rule for avoidance of double taxation. It is an internationally accepted principle that the place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole, are, in substance, made. In case of a company incorporated outside India, the current domestic law is too narrow compared to our tax treaties as the test of residence of a foreign company is based on "whole of control and management" lying in India. However a test of residence based on control and management of the foreign company being situated "wholly or partly" in India as proposed in the draft DTC of 2009 was much wider and could have led to unintended consequences.

Therefore, it has been proposed in the DTC that a company incorporated outside India will be treated as resident in India if its 'place of effective management' is situated in India. The term will have the meaning as under:

(i) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(ii) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.

(b) CFC regulations are applicable only to companies which are located in low tax jurisdiction. Further the guiding principle is control of the company by resident shareholder and not management.

(c) Will be considered.

(d) Will be considered".

1.14 **The Committee observe that several aspects of definition of Place of Effective Management (POEM) are unclear and provide room for uncertainty. The reference to Executive Directors (ED) in the POEM definition leads to ambiguity, as this term has not been defined either in the Code or in the Companies Act, 1956. Further, inclusion of 'officer' in the second limb of the definition will increase uncertainty, as commercial and strategic decision making is spread at various levels in modern day organizations. Further, determining POEM on the basis as to where such officers perform their functions is not an objective criteria of deciding fiscal residency.**

1.15 **The Committee, therefore, recommend that the definition of POEM may be amended in the light of the afore-stated reasons. The reference to ED or officer may be removed from the definition of POEM and residency should instead be determined on the basis of internationally accepted standards and judicially settled principles, where the focus is on the place, where the key management and commercial decisions as a whole are made or where the 'head and brain' of the company is situated.**

1.16 **Clause 5 – Income deemed to accrue in India**

Clause 5 of the Code reads as under :

5. (*1*) The income shall be deemed to accrue in India, if it accrues, whether directly or indirectly, through or from:

(*a*) any business connection in India;

(*b*) any property in India;

(*c*) any asset or source of income in India; or

(*d*) the transfer of a capital asset situated in India.

5 (*4*) The income deemed to accrue in India under sub-section (*1*) shall, in the case of a non-resident, not include the following, namely:—

(*g*) income from transfer, outside India, of any share or interest in a foreign company unless at any time in twelve months preceding the transfer, the fair market value of the assets in India, owned, directly or indirectly, by the company, represent at least fifty per cent. of the fair market value of all assets owned by the company;

(*6*) Where the income of a non-resident, in respect of transfer, outside India, of any share or interest in a foreign company, is deemed to accrue in India under clause (*d*) of sub-section (*1*), it shall be computed in accordance with the following formula—

$$\frac{A \times B}{C}$$

Where A = Income from the transfer computed in accordance with provisions of this Code as if the transfer was effected in India;

B = fair market value of the assets in India, owned, directly or indirectly, by the company;

C = fair market value of all assets owned by the company.

1.17 **Provision as per the existing Act**

9. (1) The following incomes shall be deemed to accrue or arise in India :—

(*i*) all income accruing or arising, whether directly or indirectly, through or from any business, connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.

IT Act does not contain a provision analogous to clause 5(4)(g) and Clause 5(6) of the DTC, 2010.

1.18 The Committee have received the following suggestions to amend the clause:

1. Such a provision should be deleted. Any tax evasion scheme or arrangement would stand covered under the GAAR provisions in the DTC 2010.

2. Parameters of FMV should be replaced with book value as per the latest audited accounts since there is no clarity on how the FMV would be prescribed. Especially, for small investors it would be difficult to obtain details of assets owned by the company, rendering the provisions otiose.
3. The criteria for computing the FMV of the assets could be applied on a particular date instead of any time during the 12 months preceding the transfer.

4. In any case, applicability of such provisions should be limited only to those cases where the primary objective of the transfer is to avoid tax in India.
5. In any case, exceptions should be provided from taxation to avoid undue hardship by excluding overseas restructuring of group companies outside India. (CII)

6. Once the threshold of Indian assets owned by the foreign company is exceeded, the section may be invoked irrespective of the stake held by the nonresident in a foreign company whose shares / interest is subject matter of transfer.

- as a result , implications of these provisions will get triggered even if the shareholder may be holding one share in the foreign company or the foreign company itself may be a listed company.
- the Indian tax administration should not be given such a wide extra territorial reach.
- it is highly advisable to restrict application of these provisions to cases where the shareholder has significant / dominant stake in the foreign company say, at least 51% interest.
- it is also advisable to exclude the transactions in listed companies.

7. In the interest of simplicity, the comparison should be restricted to the balance sheet date immediately preceding the date of transfer or at the option of the non-resident as per the last available published balance sheet. Also the onus of proving that the taxation is triggered and that value threshold is exceeded should be on the tax department and there should not be negative onus on the taxpayer to prove that the value is within the prescribed limit during the 12 months period. (Bombay Chartered Accountants Society)

1.19 The Ministry has partly accepted the suggestions. They have expressed their views as under:

1 In accordance with the principles of taxation, the tax statute has to first specify the income which is chargeable to tax i.e. first the charge on income has to be provided before anti evasion or avoidance machinery may operate to bring such income in the tax net. Accordingly, the suggestion is not acceptable as the income has to first fall within the scope of total income and then only it can be brought to tax by invoking anti-evasion provisions.

2 and 3. The concern raised about transfer of small and holdings, the date of valuation of assets will be considered.

4 and 5. The provisions are intended to outline source rule in respect of indirect transfer of assets situated in India.

6 and 7. The concern raised about transfer of small holdings, the date of valuation of assets will be considered.

The clause 314(93) of the Code define fair market value. The rule will be prescribed accordingly.

1.20 **The Committee note that Clause 5(1)(d) read with Clause 5(4)(g) and Clause 5(6) seek to tax income of a non-resident, arising from indirect transfer of capital asset, situated in India. The Committee recommend that exemption should be provided to transfer of small share-holdings and transfer of listed shares outside India, because applying these provisions in such instances will cause hardship to the non-resident shareholder. Further the criteria for computing Fair Market Value (FMV) of assets at any time during 12 months preceding the transfer date being rather onerous, the Committee would recommend that it would be fair if comparison could be made on a particular date like the balance sheet date immediately preceding the date of transfer. Further, exception may also be provided to intra group restructuring outside India, when the Code itself provides exemption from capital gains in cases of business reorganization through Clause 47(1)(g) and Clause 47(1)(h) of the Code.**

1.21 The provisions on taxability of transportation charges deemed to have been accrued in India is as follows:

5 (*2*) Without prejudice to the generality of the provisions of sub-section (*1*), the following income shall be deemed to accrue in India, namely:—

(*j*) transportation charges accrued from or payable by any resident or the Government;

(*k*) transportation charges accrued from or payable by any non-resident, if the transportation charges are in respect of the carriage to, or from, a place in India.

(*4*) The income deemed to accrue in India under sub-section (*1*) shall, in the case of a non-resident, not include the following, namely:—

(*f*) transportation charges for the carriage by aircraft or ship accrued from or payable by any resident, if the transportation charges are in respect of the carriage from a place outside India to another place outside India, except where the airport or port of origin of departure of such carriage is in India;

1.22 **Provision as per the existing Act**

44B. (1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to seven and a half per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*i*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and

(*ii*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

44BBA. (1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of aircraft, a sum equal to five per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*a*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers,

livestock, mail or goods from any place in India; and

(*b*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

1.23 It has been suggested that Sec 5(4)(f) provides that transportation charges for the carriage by ship accrued from or payable by any resident in respect of the carriage from a palace outside India to another place outside India, shall not be income deemed to accrue or arise in India, except where the port of origin or departure of such carriages in India. On combined reading of sec 5(2)(j), 5(2)(k) and 5(4)(f) it appears that transportation charges received outside India in respect of the carriage from place outside India to a place in India is taxable in India, whereas the definition of transport charges in sec 284(269) does not include the said charges.

1.24 Sec 5(4)(f) be amended to exclude transportation charges received outside India on account of carriage of passenger, livestock, mails or goods shipped at port outside India. (Bombay Chartered Accountants Society)

1.25 The Ministry is of the view that Clause 5(2)(j)&(k) provides that transportation charges shall be deemed to accrue in India if -

i). it has accrued from or is payable by any resident or the government

ii). it has accrued from or payable by any non-resident if such charges are in respect of the carriage to or from a place in India.

1.26 Clause 5(4)(f) provides exclusion from such deemed accrual with regard to the transportation charges by aircraft or ship accrued from or payable by any resident if such charges are in respect of the carriage from a place outside India to another place outside India. However, such exception shall not apply where the airport or port of origin of departure of such carriage is in India.

1.27 The term 'transportation charge' as defined in clause 314(269) inter-alia includes any amount paid whether in India or outside India to the assessee or to any person on his behalf on account of carriage of passengers, live stock, meal or goods from any place or any port in India and any amount received or deemed to be received in India by or on behalf of assessee on account of carriage of passengers, live stock, meal or goods from any place or any port outside India.

1.28 Inward freight is taxable on receipt basis. The outward freight is taxable on deemed accrual basis under clause 5(2)(j) and clause 5(2)(k). The clause 5(2)(k) also includes the freight charges in respect of carriage to a place in India (inward freight). Deeming provisions with regard to inward freight is not required as it is taxable only on receipt basis. Suitable amendments will be considered.

1.29 The Committee recommend that language of Clause 5(2) be modified in order to clearly provide that import freight received by non-resident engaged in shipping business outside India is not deemed to accrue in India, as agreed to by the Ministry. This would be in line with definition of transport charges under Clause 314(269) of the Code.

COMPUTATION OF TOTAL INCOME

Heads of Income

Classification of income

2.1 All accruals and receipts in the nature of income, shall, in general, be classified into a 'special source' or an 'ordinary source'.

2.2 The income from these sources will be liable to tax at a scheduled rate on gross basis. No deduction is allowed for any expenditure and the gross amount is subject to tax, generally at a lower rate. This is the application of presumptive taxation. These ‘special source’ incomes have been made applicable to mainly non-residents as only that portion of their total income which is sourced from India, is liable for tax under the Code. The ‘ordinary sources’ of income apply to residents and non-residents carrying business through a permanent establishment in India and are calculated by computing the net income after deducting allowable expenditures from receipts.

2.3 The accruals or receipts relating to an 'ordinary source' will be further classified under one of the five different heads:

i. Income from employment
ii Income from house property
iii. Income from business
iv. Capital gains
v. Income from residuary sources.

CHAPTER – II- Income from House Property

2.4 The annual value of a property, consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head ‘Income from house property’. However, if a house property, or any portion thereof, is occupied by the assessee, for the purpose of any business or profession, carried on by him, the profits of which are chargeable to income-tax, the value of such property is not chargeable to tax under this head.

2.5 The term ‘building’ includes residential houses, bungalows, office buildings, warehouses, docks, factory buildings, music halls, lecture halls, auditorium etc. The appurtenant lands in respect of a residential building may be

in the form of approach roads to and from public streets, compounds, courtyards, backyards, playgrounds, kitchen garden, motor garage, stable or coach home, cattle-shed etc., attached to and forming part of the building. In respect of non-residential buildings, the appurtenant lands may be in the form of car-parking spaces, roads connecting one department with another department, playgrounds for the benefit of employees, etc.

2.6 All other types of properties are excluded from the scope of income taxable under the head 'House Property'. Rental income from a vacant plot of land (not appurtenant to a building) is not chargeable to tax under the head 'Income from house property', but is taxable either under the head 'Profits and gains of business or profession' or under the head 'Income from other sources', as the case may be. However, if there is land appurtenant to a house property, and it is let out along with the house property, the income arising from it is taxable under this head.

Proposed clauses in the DTC Bill, 2010

Income from house property to be recognised on actuals.

2.7 The DTC proposes to tax only actual receipts and accruals from letting out house property. This simplifies the tax provision as currently under the Income Tax Act, notional rental value of house property (even if the house property has not been let out) is to be calculated and the higher of actual or notional is taken as the rent to be taxed.

Clause 24 – Income from House Property

2.8 Clause 24 provides that the income from letting of any house property owned by any person shall be computed under the head "income from house property".

2.9 Clause 24 reads as under :

24. (*1*) The income from letting of any house property owned by any person shall be computed under the head "Income from house property".

(*2*) The income from any house property shall be computed under this head notwithstanding that the letting, if any, of the property is in the nature of trade, commerce or business.

(*3*) The income from any house property owned by two or more persons having definite and ascertainable shares shall be computed separately for each such person in respect of his share.

(*4*) In a case where the shares of the owners of the house property referred to in sub-section (*3*) are not definite and ascertainable, such persons shall be assessed as an association of persons in respect of such property.

(*5*) The provisions of this section shall not apply-

(*a*) to the house property, or any portion of the house property, which—

(*i*) is used by the person as a hospital, hotel, convention centre or cold storage; and

(*ii*) forms part of Special Economic Zone, the income from which is computed under the head “income from business”;

(*b*) to a house property which is not ready for use during the financial year.

2.10 **Existing provision in the Income Tax Act, 1961**

22. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income tax, shall be chargeable to income-tax under the head “Income from house property”.

23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be—

(*a*) the sum for which the property might reasonably be expected to let from year to year; or

(*b*) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (*a*), the amount so received or receivable; or
(*c*) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (*a*), the amount so received or receivable :

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay

such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

2.11 On being asked during evidence as to what benefit will a taxpayer get as a result of modified provisions relating to house property as contained in DTC, the Ministry in their post-evidence information submitted to the Committee stated as follows :

> "Under the current provisions of the Income-tax Act relating to income from house property, the annual value of the property is deemed to be the fair market value or the actual rent received or receivable, whichever is higher. Under the provisions proposed in the DTC, no rental value will be imputed to a house property, hence gross rent will be based on the actual rent received or receivable. Therefore, litigation arising from the issue of determining fair market value will be substantially reduced".

2.12 Suggestions as received through written memorandum from various institutions on this clause are as under :

(i) **Impact on malls, multiplexes and IT parks**

Such ventures are taxed as business income and be allowed reduction of all operating expenses and depreciation so that a high tax incidence on such ventures could be avoided. If the scheme of taxation is not amended, it would be unviable for such enterprises to make larger investment into such infrastructure projects, much needed for the country. **(Madras Chamber of Commerce and Industry)**

(ii) Section 24(5) may be re-worded as follows:
The provisions of this section shall not apply-

(a) to the house property, or any portion of the house property, which IS LET OUT AND—

(i) is used by the person as a hospital, hotel, convention centre ~~or~~ ,cold storage, MULTIPLEXES, MALLS OR BUSINESS CENTRES ~~and~~ OR

(ii) forms part of Special Economic Zone, the income from which is computed under the head "income from business"

(b) to a house property which is not ready for use during the financial year. **(ICAI)**

(iii) The word "or" be used after sub-clause (i) in sub-clause (5). **(Bombay Chartered Accountants' Society)**

2.13 The written comments received from the Ministry of Finance (Department of Revenue) in regard to all the above said suggestions are given as under :

(i) Malls multiplexes IT parks are let out to business entities who in turn earn income under the head business. The consideration received by owner is mainly on account of utilization of space by these businesses and for some incidental services/facility. Hence this is taxable under head House property. The provisions give certainty and avoid litigation in this regard.

(ii) As the income from house property is taxable on actual receipt basis under the DTC, the clause 24(5)(b) may not be required and **will be considered** for deletion.

(iii) Suggestion is acceptable.

2.14 Further, ONGC and Petroleum Federation of India in their written memoranda suggested as under :

> "Clause 24(2) may be modified so as to provide that the income from house property shall not include any income from a house or other accommodation allotted to an employee or other person engaged by the assessee.
>
> Since allotment of accommodation to employees is not on account of employer's desire to earn rental income but to facilitate the employer's business, the earning of rent and incurrence of expenditure on maintenance, etc. of such accommodation is incidental to the employer's business. As such, it would be appropriate to not consider the same as Income from house property but as Income from business. Accordingly, it is suggested that sub-section (2) of section 24 of the Code may be modified as under:-
>
> (2) The income from any house property shall be computed under this head notwithstanding that the letting, if any, of the property is in the nature of trade, commerce or business. For the removal of doubts, it is hereby clarified that income from house property shall not include any income from a house or other accommodation allotted to an employee or other person engaged by the assessee.
>
> Section 24(2) of the code provides that "income from any house property shall be computed under this head, notwithstanding that the letting, is in the nature of trade, commerce or business". Thus, would mean denial of deduction of permissible expenditure under the business head incurred by the assessee in carrying on the business of letting of the property. Admissibility would now be restricted to what is provided under the property head. This is unfair".

2.15 The written comments as received from the Ministry of Finance (Department of Revenue) on the above said suggestions are as under :

> "**Will be considered** for providing appropriate exception to deal with issues so that property owned/provided to the employee would not be charged under the head 'house property'".

2.16 The Committee note that under the Code, income from house property is proposed to be made taxable on actual receipt basis. However, income from commercial letting out of properties such as malls, multiplexes, etc. is also proposed to be treated under the head, 'income from house property' rather than under the head 'income from business'. The Committee are not convinced with such a categorization of income and would, therefore, recommend that a distinction should be made between commercial and non-commercial renting of properties and the income head be determined accordingly. The Committee are of the view that it would be unfair to categorise all kinds of rentals as 'income from house property' regardless of whether the letting of the property was in the nature of trade, commerce or business. The Committee would, therefore, recommend that the definition of 'house property' should be re-drafted so that the distinction between commercial and non-commercial property is clearly brought out.

Clause 26 – Scope of gross rent

2.17 Clause 26 as per the Bill reads as under :

> The gross rent in respect of a house property or any part of the property shall be the amount of rent received or receivable, directly or indirectly, for the financial year or part thereof, for which such property is let out.

2.18 As per the notes on clauses as indicated in the Bill, the said clause also provides that :

> Where such property was vacant during any part of the financial year, the gross rent shall be the amount of rent received or receivable for such part of the financial year for which the house was not vacant.

2.19 **Existing provision in the Income Tax Act, 1961**

23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be—

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable.

2.20 The written suggestion as received from an expert is given as under :

> "Amount received or receivable would mean cash. What happens if the use of property is permitted in exchange for some benefit? In that case, it is neither letting nor receiving the amount. Income in respect of property would not then be taxable. The words directly or directly would not cover such arrangement. Property is enjoyed without incurring of any liability to pay tax. People would be induced to seek such or like arrangements. This would not have been possible under the IT Act".

2.21 In response to the above said suggestion, the Ministry of Finance (Department of Revenue) in their written replies stated that the suggestion **will be considered**.

2.22 **The Committee recommend that Clause 26 is recast to cover rental arrangements which may be on considerations other than cash, as agreed to by the Ministry.**

Clause 27 – Deductions from gross rent

2.23 Clause 27 deals with the deductions from gross rent for computation of income from house property.

2.24 Clause 27 reads as under :

27. (*1*) The deductions for the purposes of computation of income from house property shall be the following, namely:—

(*a*) the amount of taxes levied by a local authority in respect of such property, to the extent the amount is actually paid by him during the financial year;

(*b*) a sum equal to twenty per cent. of the gross rent determined under section 26, towards repair and maintenance of such property;

(*c*) the amount of any interest,—

(*i*) on loan taken for the purposes of acquisition, construction, repair or renovation of the property; or

(*ii*) on loan taken for the purpose of repayment of the loan referred to in sub-clause (*i*);

(*2*) The interest referred to in clause (*c*) of sub-section (*1*) which pertains to the period prior to the financial year in which the house property has been acquired or constructed shall be allowed as deduction in five equal instalments beginning from such financial year.

(*3*) The interest deductible under sub-section (*2*) shall be reduced by any part thereof which has been allowed as deduction under any other provision of this Code.

2.25 **Existing provision in the Income Tax Act, 1961**

24. Income chargeable under the head "Income from house property" shall, subject to the provisions of sub-section (2), be computed after making the following deductions, namely :-

(i) In respect of repairs of, and collection of rent from, the property, a sum equal to one-fourth of the annual value;

(ii) The amount of any premium paid to insure the property against risk of damage or destruction;

(iii) Where the property is subject to an annual charge, (not being a charge created by the assessee voluntarily or a capital charge), the amount of such charge;

(iv) Where the property is subject to a ground rent, the amount of such ground rent;

(v) Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital;

Explanation: Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as a deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years;

(vi) Any sums paid on account of land revenue or any other tax levied by the State Government in respect of the property;

(vii) Where the property is let and was vacant during a part of the year, that part of the annual value which is proportionate to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportionate to the period during which such part is wholly unoccupied.

Explanation : The deduction under this clause shall be made irrespective of whether the period during which the property or, as the case may be, part of the property was vacant precedes or follows the period during which it is let;

(viii) Subject to such rules 421 as may be made in this behalf, the amount in respect of rent from property let to a tenant which the assessee cannot realise.

(2) No deduction shall be allowed under sub-section (1) In respect of property of the nature referred to in sub-clause (i) of clause (a) of sub-section (2), or sub-section (3) of section 23 :

Provided that nothing in this sub-section shall apply to the allowance of a deduction under clause (vi) of sub-section (1) of an amount not exceeding thirty thousand rupees in respect of the property of the nature referred to in sub-clause (i) of clause (a) of sub-section (2) of section 23 or sub-section (3) of section 23.

Provided further that where the property is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or

construction is completed before the 1st day of April, 2001, the provisions of the first proviso shall have effect as if for the words "thirty thousand rupees", the words "seventy-five thousand rupees" had been substituted.

(3) The total amount deductible under sub-section (1) in respect of property of the nature referred to in sub-clause (ii) of clause (a) of sub-section (2) of section 23 shall not exceed the annual value of the property as determined under that section.

2.26 Institute of Chartered Accountants of India in their written memorandum submitted to the Committee suggested as follows :

> "The words "taxes levied by local government" be replaced by "taxes levied by local authority or GOVERNMENT" in section 27(1)(a).
>
> Further, it is suggested that deduction in respect of unrealized rent should be provided in section 27 on the lines of provisions of present Income-tax Act, 1961".

2.27 The comments as received from the Ministry of Finance (Department of Revenue) on this suggestion are as follows :

> "Clause 27(1)(a) already provides for deduction of taxes levied by local authorities as municipal taxes are levied by the local authority only in the three tier system of the Government. Further the term local authority as defined in clause 314(151) of DTC includes all constitutional local governments like municipality, Panchayat etc.

2.28 The suggestion regarding provision of unrealized rent **will be considered**".

2.29 Some other suggestions as received through written memorandum from some other institutions / organizations are as follows :

> "(i) The limit may be retained to 30% according to the increased cost of construction/renewal/repair. **(ICWAI, ICSI and Bombay Chartered Accountants' Society)**
>
> (ii) The words repairs and maintenance" may be either omitted or replaced by the word "standard deduction". The deduction should be allowed at 30% as present ITA, as even at present 30% is found inadequate in large number of cases. Service tax may be allowed as a deduction from gross rent. Adequate provisions should be made for depreciation in respect of such assets which are let out with house property. **(Bombay Chartered Accountants' Society)**"

2.30 While replying to the above said suggestions, the Ministry in their written comments stated as under :

> "Since this deduction is in the form of a standard deduction for repairs and maintenance etc, 20% is a reasonable percentage.
>
> Further, the municipal taxes and interest payable on borrowed capital is also allowable as deduction. Therefore, as in the IT Act, the Code also proposes to provide for all necessary deductions against house property income and accordingly, no further deductions are warranted".

Clause 29 – Provision for arrears of rent received

2.31 Clause 29 provides that income in respect of the rent received in arrears in a financial year shall be computed under the head "Income from house property", whether or not the person continues to be owner of the property in that year. The said clause also provides that the amount of rent referred to above shall be included in the gross rent under clause 26 for that financial year.

2.32 Clause 29 reads as under :

29. (*1*) The amount of rent received in arrears shall be deemed to be the income from house property of the financial year in which such rent is received.

(*2*) The arrears of rent referred to in sub-section (*1*) shall be included in the total income of the person under the head income from house property, whether the person is the owner of the property in that year or not.

(*3*) A sum equal to twenty per cent of the arrears of rent referred to in sub-section (*1*) shall be allowed as deduction towards repair and maintenance of the property.

2.33 **Existing provision in the Income Tax Act, 1961**

25B. Where the assessee—(*a*) is the owner of any property consisting of any buildings or lands appurtenant thereto which has been let to a tenant; and

(*b*)has received any amount, by way of arrears of rent from such property, not charged to income-tax for any previous year, the amount so received, after deducting [a sum equal to thirty per cent of such amount], shall be deemed to be the income chargeable under the head "Income from house property" and accordingly charged to income-tax as the income of that previous year in which such rent is received, whether the assessee is the owner of that property in that year or not.]

2.34 ICWAI in their written memorandum on the above said clause suggested that a sum equal to *thirty percent* of the arrears of rent referred to in sub-section

(1) shall be allowed as deduction towards repair and maintenance of the property.

2.35 The Ministry in their written replies to the above said suggestion stated that the deduction is like a standard deduction for repair and maintenance etc and for this purpose a rate of 20% is quite reasonable.

2.36 **As is seen from submissions made to the Committee and the admission of the Ministry, the formulation under Clause 27, which stipulates the items on account of which deduction can be claimed in computing income from house property does not cover unrealized rent, which is the case under the prevailing Income Tax Act. The Committee expect that this infirmity is addressed, as agreed to. The Committee also express the view that the quantum of deduction permissible towards repair and maintenance of house property – both of the rent received as well as arrears of rent covered under Clause 29 – is raised to a more reasonable percentage. The Committee expect appropriate action to be taken to this end while recasting the formulations.**

Clause 314 (116) of the DTC Bill, 2010

2.37 Clause 314 (116) of the DTC Bill, 2010 also describes 'house property' which reads as under :

"house property" means—

(*a*) any building or land appurtenant thereto; along with facilities and services whether in-built or provided separately; or

(*b*) any building along with any machinery, plant, furniture or any other facility or services whether inbuilt or provided separately;

2.38 Suggestions on this clause received from different organisations are given as under :

> "(i) Section 314(116) may be reworded as follows:-
> (a) any building or land appurtenant thereto along with OR WITHOUT facilities and services whether in-built or provided separately; or
> (b) any building along with OR WITHOUT any machinery, plant, furniture or any other facility or services whether inbuilt or provided separately. **(ICAI)**

(ii) It should be clarified that the letting of a factory alongwith all its business assets which are inseparable should be taxed as business income**. (CII)**"

2.39 The Ministry while accepting the above said suggestions have stated in their written comments that the suggestions **will be considered** for appropriate modifications in the definition.

2.40 As is the case with the other provisions pertaining to taxation of house property, the Committee note that the definition or description of house property under clause 314 (116) too has been worded rather loosely and ambiguously. As assured, the Committee expect that the formulation is revised so that the definition is clear-cut, unambiguous and without leaving scope for varied interpretation.

CHAPTER – III- INCOME FROM BUSINESS

3.1 Business income is to be determined based on gross earnings as reduced by business expenditure. The provisions dealing with computation of business income provides a list of items allowed as deduction. While the list of allowable expenses has a residential clause, the list of losses does not. Under the head of income, the Code provides for separate computation of income for separate and distinct sources of business. Clause 31 defines what constitutes a distinct and separate business.

Clause 31 – Business when treated distinct and separate

3.2 Clause 31 of the Code reads as under:

> 31(1). A business shall be distinct and separate from another business if there is no interlacing or inter-dependence between the businesses.
>
> 31(2). A business shall be deemed to be distinct and separate from another business, if—
>
> (*a*) the unit of the business is processing, producing, manufacturing or trading the same goods as in the other business and such unit is located physically apart from the other unit;
>
> (*b*) the unit of the business is processing, producing or manufacturing the same goods as in the other business and utilises raw material or manufacturing process, which is different from the raw material or the manufacturing process of the other unit;
>
> (*c*) separate books of account are maintained or capable of being maintained, for the business; or
>
> (*d*) it is a business in respect of which profits are determined under sub-section (*2*) of section 32.
>
> (*3*) A speculative business shall be deemed to be distinct and separate from any other business including any other speculative business.

Existing provision in the Income Tax Act, 1961

3.3 The provision is new. In the existing Income Tax Act, 1961, only speculation business is treated as distinct and separate.

3.4 The Committee received the following suggestions in respect of Clause 31:

(i) As it is difficult to prove whether books are capable of being maintained or not, it is suggested that section 31(2)(c) may be re-worded as follows:

"separate books of account are maintained ~~or capable of being maintained,~~ for such business"

(ii) Reinstate the computation of income at an overall entity level, as at present. It may be mentioned that it is extremely difficult to prove practically the exclusivity of business purpose so as to claim a complete deduction of business expenses. Tax authority should not be given the discretion to question such exclusivity 'carte blanche' when it hardly serves any purpose even from a tax gatherer's perspective. This, being a needless provision in the bill, should be dropped. *(FICCI)*

(iv) This provision should be restricted only to those businesses as set out in clause 32(2) i.e the specified businesses. *(IBA)*

(v) As per Accounting Standard 17 on segment reporting under the companies rules 2006, it is specifically mentioned that the segment results should not include "extraordinary items……., interest expenses……., and general administrative expenses, head-office expenses and other expenses that arise at the enterprise level and relate to the enterprise as a whole". This therefore, evidently is virtually impossible under the law in various corporate in the country. *(ASSOCHAM)*

Even otherwise, this provision would result in severe complication in respect of maintenance of books and computation of business income, which appears to be unnecessary since the profits and losses are fully adjustable against each other. *(Bengal Chamber of Commerce & Industry)*

3.5 The Ministry has partly accepted the above-said suggestion. According to the Ministry the apprehension of overburden of compliance seems valid. Stipulation for deeming a business as separate and distinct would be considered for being restricted in the Code to the following :

1. specified business as mentioned under clause 32(2),
2. assesses who may claim deduction under the provisions of Chapter VI-A of the IT Act as saved under repeals and savings clause i.e. clause 318 of the DTC.
3. Speculation business

3.6 **The Committee observe that this Clause would increase administrative hassles for the assessee with no appreciable benefit to the revenue authorities. Since business losses are fungible, this provision would not serve any useful purpose. The deeming fiction of treating business as distinct and separate based on the capability of maintaining separate accounts would fuel litigation as it is a very subjective criteria. Further, profit linked incentives are proposed to be phased out under the Code, so such separate computation of business profits would not have**

much of a relevance. The Committee recommend that this Clause may therefore be deleted.

Clause 33 – Gross earnings

3.7 Clause 33 of the Code deals with gross earnings of the business. The clause reads as under:

> **33.** (*1*) The gross earnings referred to in sub-section (*3*) of section 32 shall be the aggregate of the following, namely:—
>
> (*i*) the amount of any accrual or receipt from, or in connection with, the business;
>
> (*ii*) the value of any benefit or perquisite, whether convertible into money or not, accrued or received from, or in connection with, the business;
>
> (*iii*) the value of the inventory of the business, as on the close of the financial year; and
>
> (*iv*) any amount received from a business after its discontinuance.
>
> (*2*) The accruals or receipts referred to in sub-section (*1*) shall, without prejudice to the generality of the provisions of that sub-section, include the following, namely:—
>
> (*i*) the amount of any compensation or other payment, accrued or received, for—
>
> (*a*) termination or modification of terms and conditions relating to management of business, any business agreement or any agency; or
>
> (*b*) vesting of the management of any property or business in another person or the Government;
>
> (*ii*) any consideration accrued or received under an agreement for non-compete;
>
> (*iii*) any amount or value of any benefit, whether convertible into money or not, accrued to, or received by, a person, being a trade, professional or similar association, in respect of specific services performed for its members;
>
> (*iv*) any consideration on sale of a licence, not being a business capital asset, obtained in connection with the business;
>
> (*v*) any consideration on transfer of a right or benefit (by whatever name called) accrued or received under any scheme framed by the Government, local authority or a corporation established under any law for the time being in force;
>
> (*vi*) the amount of cash assistance, subsidy or grant (by whatever name called), received from any person or the Government for, or in connection with, the business other than to meet any portion of the cost of any business capital asset.

Existing provision in the Income Tax Act, 1961

3.8 The relevant provision in the existing Act is as follows:

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

(*i*) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year ;

(*ii*) any compensation or other payment due to or received by,—

(*a*) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(*b*) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto ;

(*c*) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto;

(d) any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business ;]

(*iii*) income derived by a trade, professional or similar58 association from specific services performed for its members ;

(*iiia*) profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947);]

(*iiib*) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;

3.9 The Committee has received the following suggestion in respect of Clause 33 :

(i) It is wrong to do away with the distinction between the capital and revenue receipts. In case of capital receipts, in most cases, the gain is

notional on account of inflation or the receipt may be on account of personal loss/damage etc.

(ii) Concept of receipt is substantially widened whereas the deduction for expenses etc. has been made very stringent.

(iii) Any capital asset connected with the business is classified as business capital asset (BCA) and the profit on transfer thereof (in most cases, large portion of which may be notional on account of inflation) is taxed as normal business income. Because of this, small business men/medical and other professional who partly use their residential house also for business/profession purpose will be hit hard. Again mandatory allowance of depreciation will create further practical difficulties, in such cases.

(iv) The concept of keeping business re-organization (such as amalgamation, demerger, conversion of non-corporate entity) tax neutral with a view to support and encourage the growth of business, has also been effectively given go by on account of the above referred treatment of BCA.

(v) The terminology in the existing section 28 of the IT Act is different from the DTC. It gives the impression that even capital receipts like loan or equity received are included in gross earnings.

Section 33(1)(i) may be reworded as follows:

"any accrual or receipt OF INCOME from, or in connection with, the business".

3.10 The Department has offered the following comments in respect of the above-said suggestions:

There are two models for computation of income under the head "Income from business". The first is the model where the taxable income is equal to business profits with specified adjustments. However, this model does not provide for items of receipts which form part of business profit and as a result, there are frequent disputes about taxability of receipts and deduction for expenses. The second model is the income-expense model where the taxable income under the business head will be equal to gross income as reduced by allowable deductions. To the extent possible the items of receipts and deductions for expenses have been enumerated in the Code to reduce litigation. This income-expense model is also being followed in USA, Canada, Australia and a number of Asian countries. Therefore, the model followed in the DTC is based on best international tax practices.

The concern expressed that current language of clause 33(1)(i) is too wide as it may treat capital receipts like loans or equity capital as taxable earning of the business will be suitably addressed.

Further, the distinction of business capital asset and investment asset introduced in the DTC will make the computation of income on transfer of these assets simpler and will reduce litigation on account of characterization of income as business income or capital gains.

3.11 **The Committee in principle approves the income-expense model adopted in the Code for computation of income under this head. This model follows an enumerative approach of listing out items of income and expenses. However, the Committee recommend that the scope of Clause 33 (1) should not be widened to include capital receipts. The Committee observe that one of the sub clauses of Clause 33(2) of the Code seems to include capital receipts as a part of gross business earnings. For example, consideration received on the transfer of capital asset, transfer of self-generated business asset, transfer of business assets, transfer of any right received from the government does not bear revenue character. Taxation of capital receipts as income under this head creates inequitable position for the assesses in view of the prohibition imposed by Clause 35(4)(b) of the code for claiming any capital expenditure while computing income from business. The Committee would therefore, recommend that Clause 33 of the Code should be modified to the extent that only revenue receipts are made taxable.**

3.12 Clause 33(1)(iii) provides that gross earnings shall include value of the inventory of the business, as on the close of the financial year.

3.13 Clause 35(3)(a) provides for deduction of the value of inventory of the business, as at the beginning of the financial year.

3.14 The provision does not exist in the Income Tax Act, 1961

3.15 The Committee has received memoranda from different Chambers/Organisations suggesting the following changes in the proposed clause:

1. The inventory valuation should be subject to a special type of audit investigation to be done by the department in doubtful cases.

2. This may be done on selection basis, preferably by fixing some threshold limit of turnover, say Rs. 20 crores and above, beyond which, the assessing officers of the income tax department can select some units for scrutiny to strengthen the hands of the revenue authorities.

3. This type of special audit should be done in the line of sec 142(2A) of ITA 1961 or clause 151(2) of DTC Bill, 2010 or Sec 14A and 14AA of the Central Excise Act, 1944, which are all intended to provide preventive check and control on corporate / assesses so that there exists an in-built control system of proper inventory valuation.

4. Such special audits may be ordered for at least 10-15% of total assesses of the income tax department by executive orders to be issued by CBDT so that the preventive control works as moral check on assesses to show correct valuation of inventory in order to keep transparency in final accounts.

5. "Special audit of cost of inventory" may be done by a "cost accountant in practice" as per meaning of the cost and works accountants act, 1959.

3.16 The reply of the Ministry is as follows:

The provision of first including value of inventory as on close of F.Yr. in gross earnings and thereafter providing a deduction for the value of inventory as at beginning of the financial year is a standard way of preparing trading account. As far as valuation of inventory is concerned, the same would be done wherever required during investigations, if is found that the accounts do not reflect the correct profits on account of inventory valuation, there is no need at this stage to provide for specialized evaluation of inventories in the DTC.

3.17 The Committee agree with the treatment of inventory as prescribed in the Code for computing business income. As far as the need for prescribing special audit for inventory valuation in doubtful cases by the Department is concerned, the same can be done later under the Rules.

3.18 Clause 33(2)(xi) includes consideration accrued or received on transfer of carbon credits within the scope of gross earnings.

3.19 This is not provided in the existing Act.

3.20 The Committee has received memoranda from ASSOCHAM suggesting the following changes in the proposed clause:

Huge capital investments are made by corporate for upgradation of technology to minimize emission of harmful gases. On account of these capital investments, corporates are eligible for carbon credits. Therefore,

instead of upfront taxing the carbon credits, the sale consideration maybe reduced from cost of assets or WDV thereof.

3.21 The Ministry has replied that consideration received on carbon credits is a receipt of revenue nature. Therefore, the consideration can't be decreased from actual cost of capital investments. Moreover, the suggestion would only introduce undesirable complexity in accounts.

3.22 **Since the consideration received on carbon credits is being understood as revenue receipts, corresponding revenue expenses can be claimed by the assessee against this receipt. Accordingly, the Committee conclude that there is no need to make any changes in this clause.**

3.23 Clause 33(2) (xii) of the Code includes in gross earnings the amount of any benefit accrued to, or received by, the person, or as the case may be, the successor in business, if—

(*a*) it is by way of remission or cessation of any trading liability or statutory liability or it is in respect of any loss or expenditure, including a unilateral act by way of writing off such liability in his accounts; and

(*b*) the trading liability or statutory liability or loss or expenditure has been allowed as deduction in any financial year;.

Further as per clause 314(215) "remission or cessation of any liability" includes the remission or cessation of any liability—

(*a*) by a unilateral act by the assessee by way of writing off such liability in his account or creating a reserve (by whatever name called); or

(*b*) by virtue of there being no transaction with the creditor during the period of five years from the end of the financial year in which the last transaction took place.

3.24 The existing provision per the Income Tax Act, 1961 is as follows:

> **41.** (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year he has obtained, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, it shall be deemed to be profits and gains of business or profession of that previous year.

3.25 The Committee has received memoranda from different Chambers/Organisations suggesting the following changes in the proposed clause:

> Outstanding liability shall be taxed in the hands of the debtor if there is no movement in the creditor account for the last five years. This is irrespective of a suit pending before any court for recovery of such liability or where the debtor acknowledges the debt during the 3 years. The limitation Act provides that if debtor acknowledges the debt in 3 years, the creditor would get fresh lease of 3 years to file any suit.
>
> Therefore, sub-clause (b) of 314(215) may be deleted. The taxability of outstanding liability only on the basis of no movement in the creditor account would lead to anomaly and would be prejudicial especially to sick companies or companies facing financial hardships. Alternatively, suitable modifications should be done so that outstanding liability would not become income in the cases where suit is pending or the debtor is acknowledging its debt.

3.26 The Ministry has given the following comments on this issue:

> If the liability is in nature of trading liability, it would be recognized as income after 5 years only, if it has been already claimed as deduction earlier.
>
> Five year time is sufficiently long time for recognizing the liability as income. Further, clause 35(3)(f) allows deduction of any subsequent payment in respect of a remitted or ceased liability.
> However, to address the issue of business disputes, exception would be provided where there is a pending suit or where creditor acknowledges the outstanding liability of the assessee in that year.

3.27 **The Committee observe that this sub clause treats remission of liability as income which is against the notion of income as commercially known. The Code also proposes to treat non-movement of creditors account beyond five years as taxable income of the debtor. These provisions may prove prejudicial to sick companies and companies in financial distress. The Committee would therefore recommend that this sub-clause may be considered for deletion.**

3.28 Clause 33(2)(xiii) provides that the accruals or receipts in connection with the business shall include the amount of remission or cessation of any liability by way of loan, deposit, advance or credit.

3.29 This is not provided in the Income Tax Act, 1961.

(i) The clause is too broad and would cover even capital receipts. Further where the remission is taxed in the one hand, it can't be claimed as a deduction by the lender as there is no provision for the same in business expenditure. Therefore clause (xiii) may be substituted with the provisions which will have the same scope as in clause (a) under sub-sec 1 of sec 41 of the Act.

Inclusion of capital receipts as part of gross earnings would result in a tax that is confiscatory in nature.

Exclusion should be provided for cases where there is no transaction for 3 years as per the terms of the contract. (CII)

(ii) If remission or cessation of liability is taxed as income, then subsequent payments, if any, should be allowed as a deduction. Items of capital nature should not be taxable as revenue. (Bombay Chamber of Commerce)

3.30 According to Indian Chambers of Commerce, Calcutta, genuine business transactions are being deemed as notional taxable income. Even remission of liability in corporate debt restructuring may become taxable. Period of five years may pass due to court proceedings this provision may be altogether omitted from DTC.

3.31 The Ministry of Finance has partly accepted the suggestions of the Chambers. It is of the view that the clause has been included to plug a major loophole in routing funds categorizing them as loans. An exception will be provided in the case of pending suit or where the creditor acknowledges the liability of the assessee. Therefore, the concern that such receipt would be taxed in each and every case will be addressed.

In any case subsequent payments, if any, are allowed as deduction under 35(3)(f) in the hands of the debtor. Also a time period of 5 years is a long time for settlement of genuine claims.

3.32 **The Committee note that this provision may prove to be very harsh as genuine business transactions would be deemed as notional income. This would go against the principles of commercial expediency. The Committee, therefore, recommend that this sub-clause may be dropped or**

alternatively, this sub clause may be amended to provide exceptions in following cases: -

- **Claim as a subject matter of suit.**
- **When the Creditor has acknowledged the liability of assessee.**
- **Cases of arbitration.**

3.33 Clause 33(2)(xix) of the Code provides that the accruals or receipts in connection with the business shall include any amount accrued or received on account of the cessation, termination or forfeiture in respect of agreement entered into in the course of the business.

3.34 Clause 37(5) r.w. Schedule 22 Para 4 Item 6 provides that any loss on account of forfeiture of any agreement entered in the course of the business would be allowed as deferred revenue expenditure over a period of six years.

3.35 This is not provided in the existing Act.

3.36 CII has suggested that while the receipt is considered as income in the financial year itself whereas the loss is allowed on deferred basis. Similarly, provision should be made for deferment of income. This suggestion has not been accepted by the Department of Revenue.

3.37 The Ministry has reasoned that such a provision has been brought in to counter collusive breach of contract so as to transfer profits from a tax paying entity to one which is exempt or loss making. In order to avoid profit-stripping, loss has to be spread over a number of years.

3.38 It was further suggested by IBA to the Committee that If remission or termination of liability is taxed as income, subsequent payments should be allowed as deduction. Therefore, the operating expenditure in clause 35(2) should also include – 'the payments made in respect of liability which is taxed under clause (xix) of sec 33(2) in any financial year, including any earlier financial year'.

3.39 The Ministry has agreed to address this issue.

3.40 **The Committee recommend changes in Clause 35 so as to include subsequent payment of liability taxed under Clause 33(2)(xix) of the Code,**

as agreed to by the Ministry. This would be in line with the concept of income-expense model being followed under the Code.

3.41 Clause 33(2)(xx) of the Code provides that the accruals or receipts in connection with the business shall include any amount accrued or received, whether as an advance, security deposit or otherwise, from the long term leasing or transfer of—

(*a*) the whole or part of any business asset; or

(*b*) any interest in a business asset.

3.42 Clause 35(2)(xliii) of the Code provides for the repayment of any advance or security deposit in respect of the long-term leasing referred to in clause (*xx*) of sub-section (*2*) of section 33, in the year in which such repayment is made

3.43 This is not provided in the existing Act.

3.44 The Committee has received memoranda from different Chambers / Organisations suggesting the following changes in the proposed clause:

> In a lease transaction, possession of business asset is given to the lessee. Advance or security deposit remains an advance to secure business interest of lessor. Taxing this amount will severely affect viability of NBFC's, banks and FIs.
>
> Further, in computing WDV of such assets, money receivable in respect of asset sold would be reduced thereby leading to lesser depreciation in the hands of lessee and on other hand advance/security deposit would be taxed as gross earnings in the hands of lessor. This is an anomaly.
>
> Also, term 'transfer' is conspicuously absent from clause 35(2)(xliii) even though included in clause 33(2)(xx).
>
> Therefore, clause 33(2)(xx) may be omitted – as it is including a continuing liability in gross earnings.
>
> Alternatively, it may be advisable not to include the term ' transfer' within clause 33(2)(xx) of the code. (CII)
>
> The section may be deleted because liability cannot be construed as income. (ICAI)

3.45 The Ministry has partly accepted the above-said suggestions. They are of the view that amount received by way of deposit etc in case of long term leasing (as defined in clause 314(154) to be for a term of not less than twelve years) is treated as business income. Subsequent deduction allowed on repayment of deposit or advance. This is to avoid tax planning through long term lease.

3.46 The provision is incorporated to counter those lease transactions where the advance/security deposit is actually in nature of sale proceed of business capital asset. However, deduction is allowed whenever any repayment is made.

3.47 Where the asset has been transferred, there is no likelihood of any repayment. The word 'transfer' in clause 33(2)(xx) will be considered for omission. Appropriate amendment corresponding to section 51 of the Income-tax Act in relation to receipt of advance, security deposit in contemplation of transfer will also be considered.

3.48 **The Committee broadly agree with the Ministry that incorporation of this provision is necessary to counter tax planning through long term leases. This provision may have an effect on the cash flows of a business entity, but in the larger interest of revenue, the provision needs to be retained. The Committee however recommend that deduction should be allowed for subsequent repayments of amounts taxed earlier. Accordingly, the word 'transfer' in clause 33(2)(xx) should be omitted as agreed to by the Ministry.**

3.49 Clause 33(2)(xxi) of the Code provides that the accruals or receipts in connection with the business shall include any amount received as reimbursement of any expenditure incurred.

3.50 This is not provided in the existing Income Tax Act, 1961.

3.51 The following changes has been proposed in the proposed clause:

> Reimbursement of expenditure results in reduction of expenditure. Also nothing really is earned out of reimbursements. The clause, thus, may be omitted as it is not an item of earning. Alternatively, the clause should be restricted to reimbursement of business expenditure allowed as a deduction under clause 35. (CII)

Reimbursement of any expenditure is taxed whereas deduction of expense is allowed only if laid out and expanded wholly and exclusively for business. A situation could be there where one entity spends on behalf of group and gets reimbursement which would be put to tax but the expenditure would not be allowed as deduction.

Thus, the item of expenses provided under sec 33(2) should specifically cover the corresponding expenditure incurred by an assessee in respect of reimbursement taxable under clause (xxi) of sec 33(2) of DTC. (ASSOCHAM)

3.52 The Ministry refuses to omit the said Clause.

3.53 The Clause proposes to treat reimbursement of any expenditure as income. While accounting for such receipt, it is either reduced from the expenditure incurred or the expenditure is debited and the reimbursement is credited to the profit and loss account.

3.54 Since in the DTC income-expense model has been adopted, it provides for treating the reimbursement of expenditure as income and the expenditure as deduction.

Suitable amendment may be considered in clause 35(2) to specifically provide for deduction of expenditure referred to clause 33(2)(xxi).

3.55 **The Committee in principle approves the income expense model for computation of taxable income under this head. Since the clause in question is practical application of this principle, the Committee do not favour omission of this sub-clause. However, as agreed to by the Ministry, necessary amendments may be considered in Clause 35(2) of the Code.**

3.56 Clause 33(2)(xxiii) of the Code provides for taxing of payments made otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft exceeding specified amounts [thirty-five thousand rupees] and in certain cases and circumstances.

3.57 Section 40A(3) of the existing Act is similar except that under IT Act deduction was not allowed whereas under DTC it is recognized as income.

3.58 IBA has suggested the following changes in the said Clause:

Payments done through direct debit to bank accounts, use of credit and debit cards, other card payment mechanisms, electronic mode of payment

like internet, mobile phone, real time gross settlement (RTGS), national electronic funds transfer (NEFT), etc and through web portals should also be accepted as valid modes of payments.

3.59 The Ministry has replied that the clause enables the government to describe the cases and circumstances under which payment will not be made by cross account payee. These will be appropriately provided in the Rules to be framed.

3.60 **The Committee note that in an era of increased online money transfer, the Ministry, while framing the Rules under this sub-clause, should specifically permit such newer forms of legal online payment/settlement.**

3.61 Clause 35 of the code lists operating expenditures allowed as business deductions. Further clause 35(2)(xliv) allows deduction of any other operating expenditure not covered in the list.

3.62 The provision in the Income Tax Act, 1961 are as follows:

> Clause 35 in DTC is spread over section 30, 31, 36, 37, 40, 43 etc. in the Income-tax Act. General deduction of any business expenditure is provided under section 37.
>
> General.
>
> **37.** (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

3.63 In written memoranda received by the Committee, the following changes have been proposed:

> It is suggested that rather than enlisting the expenditures, general clause as provided in the present Act [section 37] should be inserted. The list should be inclusive and not enumerative as enlisting would lead to more and more litigation. Also assessee, for the purpose of avoiding litigation, would adjust expenditure under one or the other head for eg. for expenditure such as management consultancy, brand image consultancy, accident insurance, guest house rent, contract labour payment, running/maintenance of two wheeler, sitting fee of director, pollution control expenses, dog maintenance charges and so on, no specific head has been provided.

There seems to be an infinite looping in section 34 and 35, when read with cross references to section 32(3),34(1),35(1)(b),35(3) which needs to be removed.

Similarly, there seems to be looping in section 35(1) read with section 35(2) and section 35(2)(xliv). This sort of looping renders the drafting "clumsy" and may be avoided.

Further, it is suggested that in section 35(2)(xliv) the words "operating" be replaced by the words "business"

3.64 The Ministry has replied as follows:

In the Income-tax Act, 1961, the taxation of business income is based on the model where the taxable income is equal to business profits with specified adjustments. However, this model does not provide for items of receipts which form part of business profit and as a result, there are frequent disputes about taxability of receipts and deduction for expenses.

Considering the disputes and the prolonged litigation on that account, income-expense model has been adopted in the DTC. To the extent possible the items of receipts and deductions for expenses have been enumerated in the Code to reduce litigation. This income-expense model is also being followed in USA, Canada, Australia and a number of Asian countries. Though items of receipts and expenses have been enumerated, yet a residuary clause has been provided to allow for other operative expenses incurred wholly and exclusively for the purposes of the business. This has been done with a view to allow for other expenses which are incurred for the purposes of the business.

It may also be pointed out that DTC categorizes business expenditure under three heads

(i) operating expenditure

(ii) finance charges

(iii) capital allowance.

The suggestion that the word "operating" appearing in clause (xliv) be replaced by the words "business" is not acceptable as clause (xliv) forms part of 'operating expenditure'. If the suggested change is accepted it will disturb the classification of expenses and result in claim of double deduction for the same expense.

However, further simplification in the drafting may be considered.

3.65 **The Committee agree with the enumerative approach of the income-expense model adopted in the Code. The items of receipts and expenses are specifically listed to the extent possible to reduce litigation. Further, more**

items could be added or deleted in this list depending on the changes that may arise in the business and technological environment. In this context, the Committee would suggest that tax deduction for CSR expenditure in backward regions and districts may be provided to encourage more CSR activities in places where it is required. The Committee would suggest that a residuary Clause may be inserted in Clause 35(3) in the nature of Clause 35(2)(xiiv) that provides for deduction in respect of business connected losses, which are not otherwise enumerated in Clause 35(3) of the Code. The Committee agree with the Ministry's suggestion of simplifying the drafting of Clause 35.

3.66 Clause 35(2) of the Code provide that the operating expenditure will include :

(*ii*) rent paid for any premises if it is occupied and used by the person;

(*iii*) current repairs to any building if it is occupied and used by the person;

(*iv*) land revenue, local rates or municipal taxes in respect of premises occupied and used by the person;

(*v*) current repairs of machinery, plant or furniture used by the person;

3.67 The clause in the existing Act is as under:

> **30.** In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed—
>
> (*a*) where the premises are occupied by the assessee—
>
> (*i*) as a tenant, the rent paid for such premises ; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs ;
>
> (*ii*) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises ;
>
> (*b*) any sums paid on account of land revenue, local rates or municipal taxes ;
>
> (*c*) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

31. In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed—

(*i*) the amount paid on account of current repairs thereto ;

3.68 The following changes were suggested to amend this Clause:

(i) The words 'occupied and used' may be deleted as it would be difficult to prove in case of companies and trusts that they have occupied the premises.

(ii) Under head 'Income from house property' contractual rent receivable is taxed whereas here rent is allowed as deduction on payment basis. This inconsistent treatment is unjust and inequitable.

Therefore, for rent, deduction on accrual basis or in accordance with the method of accounting should be provided.

3.69 The reply of the Ministry is as follows:

(i) Premises can as well be occupied by a company/trust. The apprehension expressed is misfounded. In any case in the IT Act also word 'used' and 'occupied' were in vogue and there is no dispute as to their usage.

(ii) Clause 35(2)(ii) includes, in operating expenditure, rent paid for any premises if it is occupied and used by the person.

The term 'paid' has been defined in clause 314(*178*) to mean-

(*a*) in relation to "Income from business" or "Income from residuary sources", means incurred or actually paid, according to the method of accounting on the basis of which the income under those heads are computed; and

(*b*) in all other cases, mean actually paid;

Thus in view of the definition of the term 'paid 'the rent expenditure which has accrued will also be allowable as deduction if the method of accounting adopted is mercantile method of accounting.

3.70 As per Clause 35(2)(xxix) of the Code, deduction for an amount of contribution by the person, being an employer, to an approved fund subject to such limits and conditions, as may be prescribed.

3.71 Further as per Clause 35(2)(xxx) of the Code, contribution to any fund, referred to in clause (*xvi*) of sub-section (*2*) of section 33, to the extent the amount has been received from his employees as their contribution to the fund;

3.72 The provision as per the existing Income Tax Act, 1961 is as follows:

"36(1)(*iv*) any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to such limits as may be prescribed.

36(1)(*v*) any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust;

(*va*) any sum received by the assessee from any of his employees to which the provisions of sub-clause (*x*) of clause (*24*) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date".

3.73 FICCI has suggested to the Committee that there seems to be an inadvertent disparity in respect of deduction for employer's contribution to welfare funds. While employee's contribution is deductible even if paid before the due date, the employer's contribution is deductible only in the year of actual payment.

3.74 The Ministry has accepted the suggestion. It is of the view that under clause 35(6) employer's contribution may also be covered if paid before the due date of filing of return.

3.75 **Since the apprehensions of the stakeholders in respect of this sub-clause have been justifiably addressed by the Ministry in their replies, the Committee do not recommend any changes in this sub-clause.**

3.76 **However, the Committee recommend changes in Clause 35(6), so that employer's contribution to welfare fund is deductible, if paid before the due date of filing of return.**

3.77 Clause 35(2) (xxxi) of the Code provides for deduction of any head office expenditure by a non-resident, as is attributable to his business in India, not exceeding an amount equal to one-half per cent. of the total sales, turnover or gross receipts of business in India.

3.78 The provision as per the existing Income Tax Act, 1961 is as follows:

44C. Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, no allowance shall be made, in computing the income chargeable under the head "Profits and gains of business or profession", in respect of so much of the expenditure in the nature of head office expenditure as is in excess of the amount computed as hereunder, namely:—

(*a*) an amount equal to five per cent of the adjusted total income; or

(*c*) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India, whichever is the least :

3.79 The Committee has received following suggestions on this Clause recommending either this clause should be deleted or the caps should be increased:

(i) Head Office Expenditure should be fully deductible as it is incurred for business. There is no rationale for restricting it.

Alternatively, the deduction should be 2% of 'sales, turnover or gross receipts' or actual HOE, whichever is lower.

The expressions 'total sales' and 'gross receipts' should be defined.

(ii) The transfer pricing provision under the DTC 2010 provide for allocation of appropriate expenditure between related parties. As allocation of expenses by a Head Office to its Branch Office in India needs to be based on arm's length principles, the need for a cap on such expenses is not required.

(iii) The deduction should be restricted to the higher of 0.5 % of total sales, turnover or gross receipts or 5% of adjusted total income.

3.80 The Ministry has rejected these changes to the proposed clause. Currently, Head Office expenses is allowed upto 5% of adjustment total income. There were disputes in determining adjusted total income under the IT Act. It is also a 'circular' definition. To make the provision easier to implement, the expenditure is now allowed on basis of sales. Head Office Expenses cannot be made fully deductible, as such expenses are not fully verifiable in India and full allowance would lead to shifting of expenditure from head office outside India to the establishment in India, so as to reduce the profits. The allowance made is reasonable and therefore, no change is proposed. The term 'total sales' and 'gross receipt' are unambiguous terms and hence do not need any clarification by way of definition.

3.81 **The Committee is of the view that the deduction proposed under the Code as 1.5% of gross sales/turnover is reasonable. Further, its computation is easier than the deduction prescribed under the existing Act, which was based on 'adjusted total income'. Thus, the Committee does not recommend any changes in the proposed clause.**

3.82 Clause 35(xxxv) of the Code allows as operating expenditure- any tax (not being a tax under this Code), duty, cess, royalty or fee, by whatever name called, under any law for the time being in force, if the amount is actually paid.

3.83 As per Clause 314 (*220*) of the Code "royalty" means consideration (including any lump-sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

(*a*) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, trade mark, secret formula, process, or similar property;

(*b*) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula, process, trade mark, or similar property;

(*c*) the use of any patent, invention, model, design, secret formula, process, trade mark, or similar property;

(*d*) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(*e*) the use or right to use of any industrial, commercial or scientific equipment including ship or aircraft but excluding the amount, referred to in item numbers 7 and 8 of the Table in the Fourteenth Schedule, which is subject to tax in accordance with the provisions of that Schedule;

(*f*) the use or right to use of transmission by satellite, cable, optic fiber or similar technology;

(*g*) the transfer of all or any rights (including the granting of a licence) in respect of —

(*i*) any copyright of literary, artistic or scientific work;

(*ii*) cinematographic films or work on films, tapes or any other means of reproduction; or

(*iii*) live coverage of any event;

(*h*) the rendering of any services in connection with the activities referred to in sub-clauses (*a*) to (*g*);

3.84 The provision as per the existing Income Tax Act, 1961 is as follows:

Certain deductions to be only on actual payment.

43B. (*a*) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force.

3.85 ASSOCHAM has suggested that similar provision under the current law i.e 43B allows similar items except royalty. Thus DTC covers Royalty additionally. Considering the definition of term royalty as provided u/s 314(220), normal royalty payable to third parties under the normal business operations might also get covered under this clause. To avoid such confusion, the word 'royalty' should be removed from this clause.

3.86 The Ministry's reply in this regard is as follows:

The clause specifically covers only such royalty which is payable under any law for the time being in force. Therefore, the apprehension is not correct.

No additional comment

3.87 **The Committee do not recommend any changes in the sub clause, as the apprehension of the stakeholders has been addressed by the Ministry.**

3.88 Clause 35(2)(xliv) of the Code is the residuary clause for allowance of any other operating expenditure not covered under clause (*i*) to clause (*xliii*).

3.89 The provision as per the existing Income Tax Act, 1961 is as follows:

General.

37(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or

personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

3.90 The Committee has received the following suggestions:

(i) In draft DTC 2009, expenditure for promoting family planning expenses and HIV prevention schemes was specifically provided which is not there in DTC 2010. Therefore, there is an ambiguity whether such expenses would be allowed. The ambiguity should be removed.
(ii) Expenditure incurred for current maintenance or repairs in respect of all assets should be specifically provided and not under the residuary clause.

3.91 The Ministry's reply to the above suggestion is as follows:

(i) Revenue expenditure on family planning/ aids in relation to employees is covered under clause 35(2)(xi) welfare of workmen and staff.

(ii) It may be mentioned that the specific clauses are already there. Clause 35(2)(iii), 35(2)(v) & 35(2)(vi) allow current repair on buildings, plant, machinery, furniture, computer software and hardware. The above categorization has been provided considering the classification of assets in the Fifteenth Schedule for depreciation.

3.92 **The Committee agree with the reasoning of the Ministry that there is no ambiguity about the head under which revenue expenditure for promoting family planning and HIV Prevention Schemes will be allowed.**

3.92A Clause 35(3)(b) allows deduction of loss of inventory or money on account of theft, robbery, fraud or embezzlement, occurring in the course of the business, if the inventory or the money is written off in the books of account.

3.93 This provision does not exist in the Income Tax Act, 1961.

3.94 IBA has suggested that presently loss on sale/assignment of loans is allowed as deduction under general provisions of Income-tax Act.

DTC allows only losses specified in clause 35(3)(b). Therefore, specific provision must be inserted to clarify that the loans in respect of banks be treated as 'business trading assets' and consequently loss on sale of loans should be allowed as a deduction.

3.95 The Ministry's reply to the above suggestion is as follows:

> Allowing any loss incurred during the course of business which has not been specifically provided under section 35 will be considered.

3.96 ICAI has suggested that the said clause should be broadened as not just inventory or money but there could be losses of other assets/deposits/investments or like air tickets fraudulently booked and utilised etc.

3.97 The clause may be re-worded as follows:-

> "ANY loss ~~of inventory, or money~~, on account of theft, robbery, FIRE, fraud or embezzlement, occurring in the course of the business, if ~~the inventory, or the money~~, the loss is written off in the books of account"

3.98 Bombay Chartered Accountant has suggested that this deduction on account of loss of inventory, or money should be extended to cover losses arising on account of fire, flood, earthquake, riot, strike, terrorism or similar other disaster besides theft, robbery, fraud or embezzlement . Further, other business losses such as on account of fluctuation in foreign exchange rate, forward contract etc. should also be included.

3.99 The Ministry's reply is as follows:

> A general provision for operating expenses is provided in clause 35(2) (xliv) provides for deduction of operating expenses not covered by (i) to (xliii) of clause 35(2) and laid out or expended wholly and exclusively for the purposes of business.

3.100 **Clause 35(3) provides an illustrative list of losses that are admissible as deductions. However, there could be various types of other business losses that are not listed in the said Clause, such as losses on account of fire, flood, earthquake, strike, terrorism, fraud, foreign exchange loss, etc.**

The Committee recommend that an omnibus sub-clause may be incorporated in Clause 35(3) of the Code that would permit deduction in respect of business connected losses, which are not otherwise listed in Clause 35(3) of the Code.

3.101 Clause 35(3) (c) of the Code allows a deduction of any amount credited to the provision for bad and doubtful debts account, not exceeding one per cent of the aggregate average advances computed in the prescribed manner if,—

(*i*) the person is a financial institution, or a non-banking finance company as may be notified;

(*ii*) the amount is charged to the profit and loss account for the financial year in accordance with the prudential norms of the Reserve Bank of India in this regard; and

(*iii*) the amount of trade debt or part thereof written off as irrecoverable in the books of the person is debited to the provision for bad and doubtful debts account.

3.102 The provision as per the existing Income Tax Act, 1961 is as follows:

> 36(1)(viia). Allows deduction in respect of any provision for bad and doubtful debts made by—
>
> (*a*) a scheduled bank [not being a bank incorporated by or under the laws of a country outside India] or a nonscheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount not exceeding seven and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner.

3.103 The Committee received written memoranda suggesting following changes in the clause:

> The percentage may vary from time to time. Therefore specific percentage should not be mentioned. In any case provision made in accordance with RBI should not be disallowed.
>
> The DTC makes a reference to prudential norms of RBI and accordingly, nomenclature for "Bad and Doubtful Debts" may also be changed to "Non-performing Assets"(NPA)
>
> Instead of capping allowance at 1% permitted financial institutions should be allowed deduction for provision made pursuant to RBI norms. Alternatively, the percentage of deduction should be brought in line with the percentage prescribed under the current law.
>
> Clarity may be provided to give meaning to the term "aggregate average advances" and the mode and manner in which the same may be worked out.

3.104 The Ministry's reply is as follows:

> Currently, under Income-tax Act, deduction in respect of provision for bad and doubtful debts is capped at 7.5% of adjusted total income. This is a circular provision. It has been simplified in the DTC to provide for 1% of aggregate average advances. The prudential norms set by RBI are to regulate the lending activity of banks based on the level of non-performing assets. A credit facility becomes "non-performing" when it ceases to generate income for a bank. Under the direct tax legislation what is allowed as a deduction under "real income" concept is a bad debt i.e. a case where the principle amount of the loan is not repaid. The purpose under both systems is therefore different. Therefore, a cap is necessary to pursue the tax base vis-à-vis banks.
>
> Computation of aggregate average advances shall be provided in the Rules .

3.105 **The Committee agree with the Ministry that a suitable cap for deduction in respect of provision for bad and doubtful debt is necessary. The provisioning made by Financial Institutions in accordance with the prudential norms of RBI is done for a different purpose and it cannot be substituted for this purpose. However, the Committee desire that while framing the Rules, the Ministry should clearly define the term 'aggregate average advances' and the mode and manner in which the same may be marked out.**

3.106 Clause 35(3)(d) of the Code provides for a deduction of the debit balance, if any, on the last day of the financial year, in the provision for bad and doubtful debts account made under clause 35(3)(*c*), if the balance has been transferred to the profit and loss account of the financial year.

3.107 IBA has suggested that clarity is required in respect of the provisions of sec 35(3)(d) of DTC. The bad debts actually written off should be fully allowed as a deduction, after netting it off against the provision already allowed as deduction. Trade debts for persons other than FIs are allowed in full if actually written off.

3.108 The Ministry is of the view that provisions of Clause 35(3)(d) takes care of this situation specifically.

3.109 IBA further suggested that the words “made under clause(c)” should be replaced by the words “referred under clause (c)”.

The term “aggregate average advances” should be defined.

3.110 Provisions similar to sec 36(1)(viia)(a) granting deduction at 10% of the aggregate average advances made by rural branches of specified banks should be inserted.

3.111 Transitory provisions are required for carry forward and set off of the credit balance lying in the “provisions for bad and doubtful debts account” as at 31.12.2012, granted / claimed under ITA.

3.112 The Ministry reply to this suggestion is as follows:

> The suggestion that words “made under clause(c)” should be replaced by the words “referred under clause (c)” is also acceptable.
>
> Transitory provisions for carry forward and set off of the credit balance lying in the “provisions for bad and doubtful debts account” as at 31.12.2012, granted / claimed under ITA shall also be appropriately provided.
>
> Computation of aggregate average advances shall be provided in the Rules.

3.113 **The Committee recommend that Clause 35(3)(c) may be amended to substitute the words ‘made under Clause (c)’ with ‘referred under Clause**

(c)', as agreed to by the Ministry. Further, transitory provisions, as suggested by the stakeholders, may be appropriately provided.

3.114 Clause 35(4)(c) of the Code provide that the clause provides that operating expenditure shall not include finance charges.

3.115 This is not provided in the existing Act.

3.116 ICAI has suggested that clause 36(1) allows deduction for permitted finance charges whereas 35(4)(c) disallows all finance charges from operating expenditure. Clause 35(4)(c) should only disallow finance charges mentioned in clause 36(1).

3.117 The Ministry is of the view that all finance charges cannot be categorized as revenue in nature. Those which are of revenue nature have been listed in 36(1). Further 36(1)(d) is a residual clause covering any incidental finance charges.

3.118 **The Committee note that there is no need to amend Clause 35(4)(c) of the Code. The Committee agree with the reasoning advanced by the Ministry that all finance charges cannot be categorized as revenue in nature. Those which are of revenue nature have been listed in Clause 36(1). Finance charges under Clause 35(4)(c) may include charges of revenue and capital nature.**

Clause 41 – Deduction for scientific research and development allowance

3.119 Clause 41 allows deduction for scientific research and development allowance.

41. (*1*) A company shall be allowed a deduction equal to two hundred per cent. of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on—

(*a*) creating and maintaining an in-house facility for scientific research and development; and

(*b*) carrying out scientific research and development in the in-house facility.

(*2*) The deduction under sub-section (*1*) shall be allowed, if—

(*a*) the company creates and maintains an in-house facility for carrying out scientific research and development;

(*b*) the research facility is approved by the Central Government on the basis of the recommendation of the prescribed authority; and

(*c*) the company enters into an agreement with the prescribed authority for cooperation in the research and development facility and for audit of the accounts maintained for such facility.

3.120 **Provision as per the existing Act**

35(1)(iia) an amount equal to one and one-fourth times of any sum paid to a company to be used by it for scientific research:

Provided that such company—

(*A*) is registered in India,

(*B*) has as its main object the scientific research and development,

(*C*) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner, and

(*D*) fulfils such other conditions as may be prescribed.

3.121 ASSOCHAM has suggested that provision similar to current sec 35(1)(iia) of the Act should be introduced which provides for weighted deduction of 125% for outsourcing scientific research to R&D company as boost in outsourcing of scientific research to professional research companies can lead to innovation for the Indian economy.

3.122 The reply of the Ministry is as follows:

(i) Weighted deduction of 200% is allowed to a company for in-house research.

(ii) Scientific research expenditure is allowed fully as operating expenditure.

(iii) Depreciation on Scientific research asset is allowed at 100%.

(iv) Donation to any approved research association or national laboratory or university, college or other institution, if it is engaged in carrying on scientific research and development is eligible for weighted deduction of 175%. These incentives are sufficient for promoting scientific research.

3.123 **The Committee agree with the Ministry that the Code contains sufficient provisions to boost scientific research and development in the Country. There is thus no need to introduce a new Clause in the lines of section 35(1)(ii)(a) of the existing Act.**

CHAPTER – IV - CAPITAL GAINS

4.1 The gain on sale of a capital asset is called capital gain. This gain is not a regular income like salary, or house rent. It is a one-time gain; in other words the capital gain is not recurring, i.e., not occur again and again periodically.

4.2 Opposite of gain is called loss; therefore, there can be a loss under the head capital gain. Capital Loss means the loss on account of destruction or damage of capital asset or fall in value of asset. Thus, whenever there is a loss on sale of any capital asset it will be termed as loss under the head capital gain.

Capital Asset

4.3 Any income profit or gains arising from the transfer of a capital asset is chargeable as capital gains. Now let us understand the meaning of capital asset. Capital Asset means property of any kind, whether fixed or circulating, movable or immovable, tangible or intangible, held by the assessee, whether or not connected with his business or profession, but does not include, i.e., Capital Assets like :

1. Stock in trade held for business
2. Agricultural land in India not in urban area i.e., an area with population more than 10,000.
3. Items of personal effects, i.e., personal use excluding jewellery, costly stones, silver, gold.
4. Special bearer bonds 1991
5. 6.5%, 7% Gold bonds & National Defence Bonds 1980.
6. Gold Deposit Bonds 1999.

Types of Capital Assets

4.4 There are two types of Capital Assets:

1. Short Term Capital Asset (STCA): An asset, which is held by an assessee for less than 36 months, immediately before its transfer, is called Short Term Capital Asset. In other words, an asset, which is transferred within 36 months of its acquisition by assessee, is called Short Term Capital Assets.

2. Long Term Capital Assets (LTCA): An asset, which is held by an assessee for 36 months or more, immediately before its transfer, is called Long Term

Capital Assets. In other words, an asset, which is transferred on or after 36 months of its acquisition by assessee, is called Long Term Capital Assets.

The period of 36 months is taken as 12 months under following cases:

- Equity or Preference shares,
- Securities like debentures, government securities, which are listed in recognised stock exchange,
- Units of UTI
- Units of Mutual Funds
- Zero Coupon Bonds

Proposed clauses in the DTC Bill, 2010

Clause 46 –Capital Gains

4.5 Clause 46 reads as under :

46. (*1*) The income from the transfer of any investment asset shall be computed under the head “Capital gains”.

(*2*) The income under the head “Capital gains” shall, without prejudice to the generality of the foregoing provisions, include the following, namely —

(*a*) income from the transfer referred to in clause (*d*) or clause (*e*) of sub-section

(*1*) of section 47, if before the expiry of a period of eight years from the date of transfer of the investment asset—

(*i*) the parent company, or its nominee, ceases to hold the whole of the share capital of the subsidiary company; or

(*ii*) the investment asset is converted by the transferee into, or treated by it as, its business trading asset;

(*b*) the income from the transfer referred to in clause (*f*) of sub-section (*1*) of section 47, if any of the conditions laid down in clause (*16*) or clause (*74*) of section 314, as the case may be, is not complied with;

(*c*) the income from the transfer referred to in clause (*j*) or clause (*n*) of sub-section (*1*) of section 47, as the case may be, if any of the conditions laid down in the said clauses is not complied with;

(*d*) the amount of withdrawal referred to in sub-section (*4*) of section 55 to the extent deduction has been allowed under sub-section (*2*) thereof, if the condition laid down in the said sub-section (*4*) is not complied with;

(*e*) the amount of deposit referred to in sub-section (*5*) of section 55 to the extent deduction has been allowed under sub-section (*2*) thereof, if the condition laid down in the said sub-section (*5*) is not complied with.

(*f*) the amount of deduction allowed under sub-section (*1*) of section 55, if any of the conditions specified in sub-section (*6*) of the said section is not complied with.

4.6 **Existing provision in the Income Tax Act, 1961**

112. (1) Where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset, which is chargeable under the head "Capital gains", the tax payable by the assessee on the total income shall be the aggregate of—

(*a*) in the case of an individual or a Hindu undivided family, being a resident,—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been his total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of twenty per cent :

(*b*) in the case of a domestic company,—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of twenty per cent :
(*c*) in the case of a non-resident (not being a company) or a foreign company,—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of twenty per cent ;

(*d*) in any other case of a resident —

(*i*) the amount of income-tax payable on the total income as reduced by the amount of long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of twenty per cent.

Provided that where the tax payable in respect of any income arising from the transfer of a long-term capital asset, being listed securities or unit or zero coupon bond, exceeds ten per cent of the amount of capital gains before giving effect to the provisions of the second proviso to section 48, then, such excess shall be ignored for the purpose of computing the tax payable by the assessee.

4.7 Suggestion on this clause received through written memoranda from FICCI, CII and Associated Chambers of Commerce and Industry of India is given as under :

> A concessional rate as is provided in sec 112 of the Act should be provided for "long term capital gains", where the shares are not listed on a recognized stock exchange or any other asset.

4.8 In response to the above said suggestion, the Ministry of Finance (Department of Revenue) in their written replies stated as follows :

> "DTC proposes to treat capital gains as an income from ordinary sources and subject to tax on net basis (in accordance with the provisions of section 46 to 55). The tax is proposed to be levied at the applicable marginal rate. This means that if a person having income in the form of capital gain falls in the bracket of 10%, he will be liable to pay tax on the capital gains also at the rate of 10%. In contrast to this, under the IT ACT, capital gain arising on transfer of a long-term capital asset other than on listed securities is taxable at the rate of 20%. Therefore provisions of DTC are more equitable".

4.8A The Committee would recommend that the proposals in clause 46 may be suitably clarified reflecting the Ministry's position on the proposals being more equitable than the present Act.

Clause 47 – Income from certain transfers not to be treated as capital gains

4.9 Clause 47 reads as under :

47. (*1*) The income from the following transfers shall not be included in the computation of income under the head “Capital gains” , namely:—

(*a*) distribution of any investment asset on the total or partial partition of a Hindu undivided family;
(*b*) gift, or transfer under an irrevocable trust, of any investment asset, other than sweat equity share;

(c) transfer of any investment asset under a will;

(*d*) transfer of any investment asset by a company to its subsidiary company, if-

(*i*) the parent company or its nominees hold the whole of the share capital of the subsidiary company,

(*ii*) the subsidiary company is an Indian company; and

(*iii*) the subsidiary company treats the asset as an investment asset;
(*e*) transfer of any investment asset by a subsidiary company to the holding company, if—

(*i*) the whole of the share capital of the subsidiary company is held by the holding company or its nominees,

(*ii*) the holding company is an Indian company, and

(*iii*) the holding company treats the asset as an investment asset;

(*f*) transfer of any investment asset by a predecessor to a successor in a scheme under a business reorganisation if the successor is an Indian company;

(*g*) transfer of any investment asset, being shares held in an Indian company, by an amalgamating foreign company to the amalgamated foreign company, if—

(*i*) the transfer is effected under a scheme of amalgamation;

(*ii*) the shareholders holding nor less than three-fourths in value of the shares of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

(*iii*) the transfer does not attract tax on capital gains in the country, in which such amalgamating company is incorporated;
(*h*) transfer of any investment asset being shares held in an Indian company, by a demerged foreign company to the resulting foreign company,
if—

(*i*) the transfer is effected under a scheme of demerger;

(*ii*) the shareholders holding not less than three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company;

(*iii*) the transfer does not attract tax on capital gains in the country, in which such demerged company is incorporated;

(*i*) transfer of any investment asset, by a banking company to a banking institution, if the transfer is effected under a scheme of amalgamation, sanctioned and brought into force by the Central Government under sub-section (*7*) of section 45 of the Banking Regulation Act, 1949;

(*j*) transfer of any investment asset by a private company or unlisted public company to a limited liability partnership or any transfer of a share held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008, if—

(*i*) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;

(*ii*) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;

(*iii*) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;

(*iv*) the aggregate of capital contribution by the shareholders of the company in the limited liability partnership shall not be less than fifty per cent of the total capital of the limited liability partnership at any time during the period of five years from the date of conversion;

(*v*) the total sales, turnover or gross receipts in business of the company in any of the three financial years preceding the financial year in which the conversion takes place do not exceed sixty lakh rupees;

(*vi*) no amount is paid, either directly or indirectly, to any partner out of the accumulated profits of the company on the date of conversion, for a period of three years from the said date;

(*k*) transfer of shares of an amalgamating company by a shareholder under a scheme of business re-organisation, if—

(*i*) the transfer is made in consideration of the allotment to the shareholder of shares in the successor amalgamated company; and

(*ii*) the successor is neither a non-resident nor a foreign company;

(*l*) transfer of shares of a predecessor co-operative bank by a shareholder under a scheme of business reorganisation, if the transfer is made in consideration of the allotment to the shareholder of shares in the successor co-operative bank;

(*m*) transfer of shares by the resulting company, in a scheme of demerger, to the shareholders of the demerged company, if the transfer is made in consideration of demerger of the undertaking;

(*n*) transfer of any investment asset by a sole proprietary concern to a company, if —

(*i*) the sole proprietary concern is succeeded by the company in the business carried on by it;

(*ii*) all the assets and liabilities of the said concern relating to the business immediately before the succession become the assets and liabilities of the company;

(*iii*) the shareholding of the sole proprietor in the company is not less than fifty per cent. of the total voting power in the company and continues to remain the same for a period of five years from the date of succession;

(*iv*) the sole proprietor does not receive any consideration or benefit, directly or indirectly, other than by way of allotment of shares in the company;

(*o*) transfer of any bond or global depository receipt by a non-resident to another non-resident, if the transfer is made outside India;

(*p*) transfer of any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or any public museum or institution of national importance or of renown throughout any State or States and notified by the Central Government;

(*q*) transfer by way of conversion of any bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company;

(*r*) transfer by way of conversion of foreign exchange convertible bond of a company into shares or debentures of that company;

(*s*) transfer of any securities, if—
(*i*) the transfer is effected under a scheme for lending of any securities; and

(*ii*) the scheme is framed in accordance with the guidelines issued by the Securities and Exchange Board of India or the Reserve Bank of India;

(*t*) transfer of any investment asset, if—

(*i*) the transferor is a company; and

(*ii*) the asset of the company is distributed to its shareholders on its liquidation;

(*u*) transfer of an investment asset being land of a sick industrial company made under a scheme sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 where such company is being managed by its worker co-operative;

(*v*) transfer of any investment asset in a transaction of reverse mortgage under a scheme notified by the Central Government;

(*w*) transfer of any beneficial interest in a security by a depository.

(*2*) The reference to the provisions of sections 391 to 394 (both inclusive) of the Companies Act, 1956 in clause (*74*) of section 314 shall not apply in case of demergers referred to in clause (*h*) of sub-section (*1*).

(*3*) The provisions of clause (*u*) of sub-section (*1*) shall be applicable in a case where the transfer is made during the period commencing from the financial year in which the said company has become a sick industrial company under sub-section (*1*) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the financial year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

(*4*) In clause (*i*) of sub-section (*1*), the expressions—"banking company" and "banking institution" shall have the meaning respectively assigned to them in clause (*c*) of section 5 and sub-section (*15*) of section 45 of the Banking Regulation Act, 1949;

(*5*) In clause (*j*) of sub-section (*1*), the expressions "private company" and "public unlisted company" shall have the meaning respectively assigned to them in the Limited Liability Partnership Act, 2008.

(*6*) In clause (*w*) of sub-section (*1*), the expressions "depository" and "security" shall have the meaning respectively assigned to them in clauses (*e*) and (*l*) of sub-section (*1*) of section 2 of the Depositories Act, 1996.

As per the memorandum regarding delegated legislation as mentioned in the Bill, Clause 47 of the Bill provides that the income from the transfer of any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or any public museum or institution of national importance or of renown throughout any State or States and

notified by the Central Government, shall not be included in the computation of income under the head “Capital gains”.

Accordingly, it is proposed to empower the Central Government to issue notification(s) in this regard for the purposes of this clause.

Clause 47 further provides that the transfer of any investment asset in a transaction of reverse mortgage under a scheme notified by the Central Government shall not be included in the computation of income under the head “Capital gains”.

Accordingly, it is proposed to empower the Central Government to frame the scheme in this regard for the purposes of this clause.

4.10 **Existing provision in the Income Tax Act, 1961**

Transactions not regarded as transfer.

47. Nothing contained in section 45 shall apply to the following transfers :—

(*vi*) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;

(*via*) any transfer, in a scheme of amalgamation, of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company, if—

(*a*) at least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and

(*b*) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated;

(*vib*) any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company;

(*vic*) any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if—
(*a*) the shareholders holding not less than three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and

(*b*) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated :

Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 (1 of 1956) shall not apply in case of demergers referred to in this clause:

(*vid*) any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking;

(*vii*) any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if—

(*a*) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and

(*b*) the amalgamated company is an Indian company;

(*viia*) any transfer of a capital asset, being bonds or Global Depository Receipts referred to in sub-section (1) of section 115AC, made outside India by a non-resident to another non-resident;

(xiiib) any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 (6 of 2009):

Provided that—

(a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;

(b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;

(c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;

(d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;

(e) the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and

(f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

Explanation - For the purposes of this clause, the expressions “private company” and “unlisted public company” shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009).

4.11 On this clause, CII in their written memorandum suggested as follows :

> “1. It should also be clarified in clause 47 of the Bill that as in the case of an overseas demerger, reference to the provisions of the Indian Companies Act should not apply to even an overseas merger.
>
> Exemption should also be provided for intra-group transfer which results in the sale of indirect transfer. Also, an exclusion should be provided where such foreign company is listed in a stock exchange.
>
> 2. Business reorganizations under DTC should cover foreign companies merging into Indian companies.
>
> 3. It is suggested that conversion of a partnership firm under Partnership Act, 1932 into a limited liability partnership, should not result in taxation”.

4.12 While submitting their reply on the above said suggestions, the Ministry of Finance (Department of Revenue) in their written information stated as follows :

"1. Clause 47(1)(h) of the DTC provides that transfer of shares held in Indian company by a demerged foreign company to the resulting foreign company will not be considered as transfer subject to fulfillment of the conditions provided therein. Clause 47(2) of the DTC already provides that provisions of sections 391 to 394 (both inclusive) of the Companies Act, 1956 shall not apply in case of such demergers. Similar provisions in line with the current income tax act **will be considered** in case of overseas amalgamation.

Only business reorganization is tax neutral and transfer within the group cannot be equated with the same unless it is in the form of demerger or amalgamation. Appropriate modification **will be considered** in the definition of business reorganisation to cover foreign companies.

2. Clause 47(1)(f) already provides that transfer of any investment asset by a predecessor to a successor in a scheme under a business reorganization shall not be considered as transfer if the successor is an Indian company. In respect of indirect transfers in relation to share of foreign company underlying assets in India, provision of clause 5(4)(g) will address this issue.

3. The Ministry is in agreement with the above said suggestion and stated that it will be considered".

4.13 **The Committee desire that suitable modifications be made to make similar provisions in line with the current Income Tax Act in case of overseas amalgamations, as agreed to by the Ministry.**

4.14 **The Committee would recommend that the Ministry may make suitable modification in the clause so that conversion of a partnership firm under Partnership Act, 1932 into a limited liability partnership does not result in taxation.**

4.15 One more suggestion on this clause as received from Bombay Chartered Accountants' Society is given as below :

"In the event of non compliance of the conditions referred to in the chapter relating to capital gains, the assessee will lose the exemption provided u/s 47. Therefore, in such cases, it would be wrong to take previous owner's cost in the hand of transferee. Accordingly, in such cases, the cost of acquisition in the hands of transferee should be taken at full value of consideration for the purpose of taxing the exempt transfer u/s 46(2)(b)/(c).

4.16 While replying to the above said suggestion, the Ministry in their written information stated that suitable amendment **will be considered** in line with section 49(3) of the Income-tax Act.

4.17 **The Committee desire that suitable amendment be carried out in the clause as suggested and agreed to by the Ministry that in cases where assessee loses the exemption limit provided u/s 47 in the event of non-compliance of conditions, the cost of acquisition in the hands of transferee should be taken at full value of consideration for the purpose of taxing the exempt transfer u/s 46(2)(b)/(c).**

4.18 The Chamber of Tax Consultants in their written memorandum suggested that section 47 include a specific exemption from transfer for conversion of a partnership firm into a company on lines similar to section 47(xiii) of the existing ITA.

4.19 In their replies to the said suggestion, the Ministry in their written information stated that it **will be considered**.

4.20 **The Committee desire that suitable changes be made regarding Section 47 including a specific exemption from transfer for conversion of a partnership firm into a company on the lines similar to section 47(xiii) of the existing Income Tax Act, as agreed to by the Ministry.**

4.21 On clause 46(2)(a), Bombay Chartered Accountants' Society in their written memorandum suggested as follows :

> "Transfer of investment asset by holding company to subsidiary and vice versa:
>
> It is suggested that provision may be made on the lines of sec 49(3) of ITA to provide cost of acquisition of asset in the hands of the transferee at full value of consideration with respect to which the transferor is made liable to pay tax u/s 46(2)(a) of DTC"

4.22 In response to the above said suggestion, the Ministry in their written information stated that :

> "Section 49(3) of the IT Act provides that where the capital gain arising from the transfer of a capital asset by a parent company to its subsidiary or vice-versa is deemed to be income chargeable under the head "Capital gains" due to violation of conditions specified in section 47A of the IT Act,

the cost of acquisition of such asset to the transferee-company shall be the cost for which such asset was acquired by it.

This provision **will be considered** for incorporation in the DTC".

4.23 **The Committee desire that the Ministry should suitably incorporate provision on the lines of section 49 (3) of Income Tax Act to provide cost of acquisition of asset in the hands of the transferee at full value of consideration with respect to which the transferor is made liable to pay tax under section 46 (2)(a) of the Bill.**

4.24 With regard to clause 47(1)(g)&(h), suggestions as received from Associated Chambers of Commerce and Industry of India and CII on these sub-clauses are given as under :

"(i) It should be provided that the host country law should apply to overseas business reorganization and compliance of the provisions of the Companies Act, 1956 should not be imposed on an overseas business reorganization. The conditions for continuity of shareholding are very harsh and should be deleted.

(ii) Under clause 47(1)(g), income from transfer of investment asset being shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company shall not be included in the computation, subject to fulfillment of prescribed conditions. One of the prescribed condition is that shareholders holding not less than ¾ in value of the shares of the amalgamating foreign co. continue to remain shareholders of the amalgamated co. Whereas under the Act, the above condition is that at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company. The above condition to be relaxed in lines with the provisions of the Act.

(iii) It would also be desirable to clarify that a merger of 2 foreign companies would not lead to tax implications in the hands of the shareholder on account of indirect transfer of capital asset.

4.25 On the above said suggestions, the comments of the Ministry are as follows:

"Clause 47(1)(h) of the DTC provides that capital gain arising from transfer of any investment asset being shares held in an Indian company, by a demerged foreign company to the resulting foreign company, shall not be included in the income if the conditions stipulated in the said clause are satisfied.

In this context clause 47(2) already provides that the reference to the provisions of sections 391 to 394 (both inclusive) of the Companies Act, 1956 in clause (74) of section 314 shall not apply in case of demergers referred to in clause (h) of sub-section (1).

The conditions for continuity are not harsh. These provisions are required to ensure that the business reorganization is not used as a tax planning device.
The term amalgamation as defined in clause 314(16) of the DTC includes the following as one of the conditions to be satisfied for this purpose:

"Shareholders holding seventy-five per cent or more, in value of the shares in the amalgamating company (other than shares already held by the amalgamated company or its nominee or its subsidiary, immediately before the merger), become shareholders of the amalgamated company;"

Accordingly, for the purposes of tax benefit on account of transfer of share of an Indian company in the case of amalgamation of a foreign company by another foreign company, the condition of shareholding not less than ¾ in value of the shareholding has been provided. This brings foreign companies at par with the Indian companies so far as the benefit of clause 47 of the DTC is concerned. Threshold for demerger and amalgamation have been provided at same level.

Clause 47 of the DTC already provides for the situations where the transfer will not lead to taxation of capital gains subject to fulfillment of conditions specified therein".

4.26 **The Committee would recommend that the Ministry may explore the possibility of abolishing the Securities Transaction Tax (STT), while correspondingly calibrating the Capital Gains Tax regime – both short term and long term. Accordingly, the distinction between listed and unlisted securities should be removed. It should also be ensured that companies do not escape paying capital gains tax on the basis of DTAAs.**

Clause 47(1)(n)

4.27 On this clause, ICAI while submitting their written memorandum suggested that :

Similar exemption provision as given in 47 (n) may be inserted in case of :

a) Any succession of firm by company.

b) Any transfer from firm to company.

4.28 In their written replies to the said suggestion, the Ministry of Finance (Department of Revenue) stated that it **will be considered**.

4.29 **The Committee desire that similar exemption provision as given in clause 47 (n) may also be inserted in case of any succession of firm by company and any transfer from firm to company and the clause may be suitably modified.**

Clause 48 – Financial Year of taxability

4.30 Clause 48 of the DTC Bill, 2010 reads as under :

"48. (*1*) The income from the transfer of an investment asset specified in column (*2*) of the Table given below shall be the income of the transferor in the financial year specified in column (3) of the said Table:

TABLE

FINANCIAL YEAR OF TAXABILITY

Serial No.	**Nature of transfer**	**Financial year**
1.	Transfer referred to in clause (*d*) or clause (*e*) of sub-section (*1*) of section 47	(*a*) in a case where the investment asset is converted by the transferee into, or is treated by it as, business trading asset, the financial year in which the investment asset is converted or treated as a business trading asset; (*b*) in a case where the parent company, or its nominees, cease to hold the whole of the share capital of the subsidiary company, the financial year in which the parent company or its nominees so cease to hold the whole of the share capital of the subsidiary company.

2.	Transfer referred to in clause (*f*) of sub-section (*1*) of section 47	The financial year in which any of the conditions referred to in clause (*16*) or clause (*74*), as the case may be, of section 314 is not complied with.
3.	Transfer referred to in clause (*j*) or clause (*n*) of sub-section (*1*) of section 47	The financial year in which any of the conditions specified in the said clauses is not complied with.
4.	Transfer—(*i*) by way of compulsory acquisition under any law for the time being in force, or (ii) the consideration for which was determined or approved by the Central Government or the Reserve Bank of India	The financial year in which the compensation, or consideration, as the case may or such compensation or consideration enhanced by any court, tribunal or other authority, is received.
5.	Transfer by way of an investment asset into, or its treatment conversion of as business trading asset.	The financial year in which such asset, so converted or treated, is sold or otherwise transferred.
6.	Transfer by way of— (*i*) contribution of the asset, whether by way of capital or otherwise, to an unincorporated body, in which the transferor is, or becomes, a participant; or (*ii*) the distribution of the asset on account of dissolution of an unincorporated body.	The financial year in which the asset is transferred or distributed.
7.	Transfer by way of distribution of money or asset to a participant in an unincorporated body on account of his retirement from the body.	The financial year in which the money or the asset is distributed.
8.	Transfer by way of part performance of a contract, referred to in sub-clause (*i*) of the immovable property of clause (*267*) of section 314.	The financial year in which the possession is allowed to be taken or retained.
9.	Transfer by way of any transaction enabling the enjoyment of any immovable property referred to in sub-clause	The financial year in which the enjoyment of the property is enabled.

	(*j*) of clause (*267*) of section 314.	
10	Transfer by way of slump sale, referred to in sub-clause (*l*) of clause took place (*267*) of section 314.	The financial year in which the transfer took place.
11.	Transfer by any mode other than modes referred to in serial numbers 1 to 10.	The financial year in which the transfer took place.

(*2*) Notwithstanding anything in sub-section (*1*)—

(*a*) any money or asset received under an insurance from an insurer on account of damage or destruction of an insured asset referred to in sub-clause (*m*) of clause (*267*) of section 314 shall be deemed to be the income of the recipient of the financial year in which the money or asset is received;

(*b*) any money or asset received by the participant on account of his retirement from an unincorporated body referred to in sub-clause (*o*) of clause (*267*) of section 314 shall be deemed to be the income of the recipient of the financial year in which the money or asset is received;

(c) any money or asset received by the shareholder on account of liquidation or dissolution of a company referred to in sub-clause (*h*) of clause (*267*) of section 314 as reduced by the amount assessed as dividend within the meaning of sub-clause (*c*) of clause (*81*) of section 314, shall be deemed to be the income of the recipient of the financial year in which the money or asset is received;

(*d*) any consideration from transfer made by the depository or participant of any beneficial interest in a security shall be deemed to be the income of the beneficial owner of the financial year in which such transfer took place;

(*e*) the amount referred to in clause (*d*) of sub-section (*2*) of section 46 shall be the income of the financial year in which such amount is withdrawn;

(*f*) the amount referred to in clause (*e*) of sub-section (*2*) of section 46 shall be the income of the third financial year immediately following the financial year in which the transfer of the original asset is effected.
(*g*) the amount referred to in clause (*f*) of sub-section (*2*) of section 46 shall be the income of the financial year in which any condition referred to in sub-section (*6*) of section 55 is not complied with.

(*3*) In clause (*d*) of sub-section (*2*), “beneficial owner” shall have the same meaning as assigned to it in clause (*a*) of sub-section (*1*) of section 2 of the Depositories Act, 1996.

4.31 ICAI in their written submission on this clause suggested as follows :

The language of section 48(1) may be amended appropriately as given below-

> "the income from the transfer of an investment asset specified in column (2) of the Table shall be the income of the transferor (EXCEPT WHERE THE TRANFEROR CEASES TO EXIST) in the financial year specified in column (3) of said Table".

4.32 The comments of the Ministry on this suggestion are as follows :

> "Suitable amendment **will be considered** for providing the liability on the successor in cases where predecessor (transferor) ceases to exist".

4.33 **The Committee desire that the Ministry may carry out suitable amendment in clause 48 (1) in respect of providing the liability on the transferee in cases where transferor ceases to exist.**

4.34 **With regard to Clause 48(2)(c) of the DTC Bill, 2010, the existing provisions in the Income Tax Act, 1961 are as under :**

> "46 (2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (*c*) of clause (*22*) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.
>
> 49. [(1)] Where the capital asset became the property of the assessee—
>
> (*i*) on any distribution of assets on the total or partial partition of a Hindu undivided family;
>
> (*ii*) under a gift or will;
> (*iii*) (*a*) by succession, inheritance or devolution, or
>
> [(*b*) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or]
>
> (*c*) on any distribution of assets on the liquidation of a company, or
>
> (*d*) under a transfer to a revocable or an irrevocable trust, or

(*e*) under any such transfer as is referred to in clause (*iv*) or clause (*v*) or clause (*vi*)] [or clause (*via*)] [or clause (*viaa*)] [or clause (*vica*) or [*clause (*vicb*)] *of section 47*];

[(*iv*) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969,] the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

[*Explanation*.—In this [sub-section] the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (*i*) or clause (*ii*) or clause (*iii*) 34[or clause (*iv*)] of this [sub-section].]

55. (2) For the purposes of sections 48 and 49, "cost of acquisition",—

(*b*) in relation to any other capital asset,—

(*iii*) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution.

4.35 On this clause, Bombay Chartered Accountants' Society in their written memorandum submitted to the Committee stated as follows :

"48(2)(c) provides for taxation in the hands of the shareholder with respect to fair market value of asset received from a company under liquidation or dissolution. Sec. 53(3) r.w. 314(237)(vi) provides for cost of acquisition of asset in the hands of the shareholder received upon distribution on liquidation of company as cost to the company. These may result into double whammy. The shareholder is made liable to pay tax with respect to fair market value of the asset and still, cost of acquisition of asset in the hands of the shareholder is restricted to cost to the previous owner. This may result into double taxation in the hands of the shareholder once on receipt of such asset on distribution by the company and again on disposal of such asset at later date. One of the objects expressly provided in DTC is to avoid double taxation of income. Also, in the absence of specific provisions, there could be litigation on value to be adopted as cost of acquisition of such asset. The existing ITA expressly provides in sec 55(2)(b)(iii) the cost of acquisition in such case to mean market value of the asset on the date of distribution in respect of which shareholder pays tax as the cost of acquisition in the hands of the shareholder. There is need for similar provision in DTC to avoid double taxation as also to avoid litigation on the issue".

4.35A The comments of the Ministry on the above said suggestion are as under :

> ”Clause 314(267)(h) provides that distribution of asset on account of liquidation & dissolution of company shall be considered as transfer. Normally on transfer of an investment asset the gain is taxable in the hands of the transferor. However, in the case of distribution of asset on account of liquidation or dissolution of a company the money or asset received by the shareholder as reduced by deemed dividend is taxable in the hands of the recipient. Similar scheme of taxation is provided in section 46 of the IT Act also.
>
> Clause 50(2)(e) of the DTC provide that full value of consideration in such case shall be amount of money or the fair market value of the asset on the date of distribution, received by the shareholder on liquidation or dissolution of a company as reduced by the amount of deemed dividend. Clause 53(3) provides that the cost of acquisition of an investment asset acquired by a person by any of the special modes of acquisition which inter-alia includes liquidation of a company, shall be the cost at which the asset was acquired by the previous owner or the fair market value of the asset as on 1st April, 2000 if the asset was acquired before such date.
>
> In this context it may be mentioned that section 49(1) of the IT Act also provides that where a capital asset becomes the property of the assessee on any distribution of assets on the liquidation of a company, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee as the case may be.
>
> Section 55(2)(b)(iii) of the IT Act provides that where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been taxed on such capital gains in terms of section 46 of the IT Act, the cost of such asset shall be fair market value of the asset on the date of distribution.
>
> Since scheme of taxation of investment asset on liquidation of company under DTC is similar to the one in IT Act, a provision similar to section 55(2)(b)(iii) **will be considered** in the DTC”.

4.36 **The Committee find that the scheme of taxation of investment assets on liquidation of company in the Bill is similar to the one in the present Income Tax Act. They, therefore, desire that a provision similar to section 55 (2)(b)(iii) of Income Tax Act be suitably incorporated in the Bill.**

Clause 50 – Full value of consideration

4.37 Clause 50 reads as under :

50. (*1*) The full value of the consideration shall be the amount received by, or accruing to, the transferor, or a person referred to in sub-section (*2*) of section 48, as the case may be, directly or indirectly, as a result of the transfer of the investment asset.

(*2*) Notwithstanding anything in sub-section (*1*), the full value of the consideration, in the following circumstances, shall be—-

(*a*) the amount of compensation awarded in the first instance or the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India or the amount by which such compensation or consideration is enhanced or further enhanced by any court, tribunal or other authority, as the case may be, if the transfer of the investment asset is by the mode specified in sub-clause (*c*) of clause (*267*) of section 314;

(*b*) the fair market value of the asset as on the date of the transfer, if the transfer is by the mode specified in sub-clause (*d*) of clause (*267*) of section 314;

(*c*) the amount recorded in the books of account of the company or an unincorporated body as the value of the investment asset, if the transfer of the investment asset is by the mode specified in sub-clause (*f*) of clause (*267*) of section 314;

(*d*) the fair market value of the asset as on the date of the transfer, if such transfer is by the mode specified in sub-clause (*g*) of clause (*267*) of section 314;

(*e*) the amount of money, or the fair market value of the asset as on the date of distribution of such asset, received by a shareholder from a company under liquidation or dissolution, as reduced by the amount of dividend within the meaning of sub-clause (*c*) of clause (*81*) of section 314, if the transfer is by the mode specified in sub-clause (*h*) of clause (*267*) of section 314;

(*f*) the amount of money, or the fair market value of the asset as on the date of distribution of such asset, received by the participant, if the transfer is by the mode specified in sub-clause (*o*) of clause (*267*) of section 314;

(*g*) the amount of money, or the fair market value of the asset as on the date of the receipt of such asset, received under an insurance from an insurer, if the transfer is by the mode specified in sub-clause (*m*) of clause (*267*) of section 314;

(*h*) the stamp duty value of the asset, being land or building.

(*3*) Where the amount of compensation or consideration referred to in clause (*a*) of sub-section (*2*) is subsequently reduced by any court, tribunal or other

authority, the compensation or consideration as so reduced shall be taken to be the full value of consideration.

(*4*) Where the enhanced compensation or consideration referred to in clause (*a*) of sub-section (*2*) is received by any person other than the transferor, the said amount shall be deemed to be the income of such other person and the provisions of sections 46 to 55 (both inclusive) shall accordingly apply.

4.38 **Existing provision in the Income Tax Act, 1961**

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where—

(*a*) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(*b*) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (*i*) of sub-section (1) and sub-sections (6)and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or

assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

4.39 While forwarding their suggestions on this clause, FICCI, Bombay Chamber of Commerce and Industry and Bombay Chartered Accountants' Society in their written memorandum suggested as follows :

> "To avoid hardship and build fairness in the tax legislation, it will be desirable that the Bill contains a provision to provide an opportunity to the taxpayer to get the full value of consideration determined by a valuation officer in cases he is not agreeable to the stamp duty value.
>
> It is suggested to provide provisions on the line of section 50C of ITA. Also, there is no reason for deviating from the existing ITA.

4.40 The Ministry have submitted their comments on this suggestion as follows:

> "Stamp duty value is the value at which a land or building is registered. The provision as existing in the IT Act is complex as it involves multistep procedure to arrive at the full value of consideration. Therefore, the same has not been adopted. As DTC aims at simplification of the law as well as procedure, it provides for adoption of stamp duty value of asset being land or building".

4.41 The Committee are in agreement with the Ministry that stamp duty value is the value at which land or building is registered.

Clause 51 – Deduction for cost of acquisition etc.

4.42 Clause 51 reads as under :

51. (*1*) The deductions for the purposes of computation of income from the transfer of an investment asset shall be the following, namely:—

(*i*) the cost of acquisition, if any, of the asset;

(*ii*) the cost of improvement, if any, of the asset; and

(*iii*) the amount of expenditure, if any, incurred wholly and exclusively in connection with the transfer of the asset.

(*2*) In the case of transfer of an investment asset, being an equity share in a company or a unit of an equity oriented fund and such transfer is chargeable to securities transaction tax under Chapter VII of the Finance (No.2) Act, 2004,—

(*a*) where the asset is held for a period of more than one year,

(*i*) if the income computed after giving effect to sub-section (*1*) is a positive income, a deduction amounting to hundred per cent of the income so arrived at shall be allowed;

(*ii*) if the income computed after giving effect to sub-section (*1*) is a negative income, hundred per cent. of the income so arrived at shall be reduced from such income.

(*b*) where the asset is held for a period of one year or less,

(*i*) if the income computed after giving effect to sub-section (*1*) is a positive income, a deduction amounting to fifty per cent. of the income so arrived at shall be allowed;

(*ii*) if the income computed after giving effect to sub-section (*1*) is a negative income, fifty per cent. of the income so arrived at shall be reduced from such income.

(*3*) If an investment asset, other than that referred to in sub-section (*2*) of the section or sub-section (*5*) of section 53, is transferred at any time after one year from the end of the financial year in which the asset is acquired by the person, the deductions for the purposes of computation of income from the transfer of such asset shall be the following, namely:—

(i) the indexed cost of acquisition, if any, of the asset;

(*ii*) the indexed cost of improvement, if any, of the asset;
(*iii*) the amount of expenditure, if any, incurred wholly and exclusively in connection with the transfer of the asset; and

(*iv*) the amount of relief for rollover of the asset, as determined under section 55.

4.43 **51(2)(a) and (b) read with clause 314(102)**

Clause 51(2)(a) – given above

Clause 314 (102) is given as under :

(*102*) “financial year” or “year” means—

(*a*) the period beginning with the date of setting up of a business and ending with the 31st day of March following the date of setting up of such business;

(*b*) the period beginning with the date on which a source of income newly comes into existence and ending with the 31st day of March following the date on which such new source comes into existence;

(*c*) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be;

(*d*) the period beginning with the 1st day of the financial year and ending with the date of retirement or death of a participant of the unincorporated body;

(*e*) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the 31st day of March following the date of the retirement, or death, as the case may be; or

(*f*) the period of twelve months commencing from the 1st day of April of the relevant year in any other case.

4.44 Existing provision in the Income Tax Act, 1961

Mode of computation

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

(*i*) expenditure incurred wholly and exclusively in connection with such transfer;

(*ii*) the cost of acquisition of the asset and the cost of any improvement thereto:

Provided that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilized in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company :

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (*ii*) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted :

Provided also that nothing contained in the second proviso shall apply to the long-term capital gain arising from the transfer of a long-term capital asset being bond or debenture other than capital indexed bonds issued by the Government :

Provided also that where shares, debentures or warrants referred to in the proviso to clause (*iii*) of section 47 are transferred under a gift or an irrevocable trust, the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for the purposes of this section :

Provided also that no deduction shall be allowed in computing the income chargeable under the head "Capital gains" in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.

10. (*38*) any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund where—
(*a*) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(*b*) such transaction is chargeable to securities transaction tax under that Chapter :

Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.
111A. (1) Where the total income of an assessee includes any income chargeable under the head "Capital gains", arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund and—

(*a*) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(*b*) such transaction is chargeable to securities transaction tax under that Chapter, the tax payable by the assessee on the total income shall be the aggregate of—

(*i*) the amount of income-tax calculated on such short-term capital gains at the rate of fifteen per cent; and

(*ii*) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee.

4.45 One suggestion received on this clause is as under :

> "The capital gains arising in equity shares / units of mutual funds held for more than, say 36 months should be treated as fully exempt instead of putting it under the indexing process as proposed. In fact the amount invested by the senior citizens in equity shares/ units of mutual funds were

out of the retirement benefits of such persons for peaceful existence after retirement and for meeting obligatory expenses in connection with higher education, marriage etc of children. Therefore, it is requested that capital gains arising from securities held in the hands of senior citizens as investments for more than 36 months should be exempt from tax".

4.46 The written comments as furnished by the Ministry on the said suggestion are as follows :

"The capital gains arising from transfer of equity shares and units of equity oriented mutual funds which are held for a period of more than one year and which are liable to Securities Transaction Tax are allowed 100 percent scaling down under clause 51 of the DTC. This means that capital gains arising on transfer of such assets is not chargeable to tax.

In addition to above, benefit of indexation is also available to an asset (other than that liable to STT) held for more than one year from the end of financial year in which it was acquired. Thus the cost of the asset including the increase on account of inflation, and also other expenses wholly and exclusively incurred for the transfer of an investment asset are already allowable under the DTC.

As capital gains tax on listed securities is nil if held for more than one year, special dispensation for any class is not required".

Clause 51(2)(a)(ii)

4.47 As given above.

4.48 **Existing provision in the Income Tax Act, 1961**

Incomes which do not form part of Total Income.

10(38) any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund where—

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter :

4.49 Suggestion as received from an expert on this Clause is given as under :

"This clause provides that if the income by way of capital gain is a negative income, 100% of the income shall be reduced from such income. How can the amount of the negative income be reduced by the amount of the negative income? A similar provision has been made in clause 51(2)(b)(ii)".

4.50 The Ministry while submitting their written replies on the above said suggestion stated as under :

> "The provision for scaling down of negative income has been provided to bring it at par with the treatment given to positive income so as to make the provision equitous. The clause **will be reconsidered** for removing any ambiguity".

4.51 **The Committee are in agreement with the Ministry and would expect that the said clause may be reviewed for removing ambiguity, as agreed to by the Ministry.**

4.52 With regard to clause 51 (3) of this code, suggestion received from CII, Associated Chambers of Commerce and Industry of India and Bombay Chamber of Commerce and Industry on this clause are given as under :

> "The period of holding to qualify as "long term" should be provided to be one year in all cases of investment assets and not one year from the end of the FY in cases of sale of investment assets which has not borne STT.
>
> This will bring the provisions of sec. 51(3) in line with sec 51(2)(a) and will bring in simplicity.
>
> Period of holding is to be computed from the end of the FY in which asset is acquired. For an asset to qualify for LTCG, the asset will have to be held for the period ranging from 366 days to 730 days as against 366 days under the ITA.
>
> For an asset to qualify for LTCG, the period of holding should be 366 days. Accordingly the period of holding should be computed from the day the asset acquired and not from the end of financial year in which asset is acquired.

4.53 The Ministry have furnished their written comments on this suggestion as under :

> "Under the IT Act an asset is held to be a long term capital asset if it is held for a period of more than 36 months. However, shares units of mutual funds or zero coupon bond held for more than twelve months are considered to be long term capital asset.
> DTC provides that any security liable for STT if held for a period of more than one year will be eligible for scaling down of income by 100%. The other assets held for more than one year from the end of the financial year in which they are purchased will be eligible for indexation benefit. Thus the DTC already relaxes the period of holding from 36 months to a period ranging between 13 months to 23 months for the benefit of indexation.

This gives flexibility to the taxpayer for acquisition as well as transfer of asset, for the purpose of availing the benefit of indexation".

4.54 **The Committee endorse the view of the Ministry that sufficient flexibility has already been provided in the Code for acquisition and transfer of asset for the purpose of availing the benefit of indexation in computing capital gains.**

Clause 53 – Cost of acquisition of an investment asset

4.55 **Clause 53 (1)(a)**

Clause 53 (1)(a) reads as under :

53. (*1*) Unless otherwise provided, the cost of acquisition of an investment asset, shall be-

(*a*) the purchase price of the asset; or

(*b*) at the option of the person, the fair market value of the asset on the 1st day of April, 2000, if the asset was acquired by the person before such date.

4.56 **Existing provision in the Income Tax Act, 1961**

55. (2) For the purposes of sections 48 and 49, "cost of acquisition"—

(*aa*) in a case where, by virtue of holding a capital asset, being a share or any other security3, within the meaning of clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this clause referred to as the financial asset), the assessee—

(*A*) becomes entitled to subscribe to any additional financial asset ; or

(*B*) is allotted any additional financial asset without any payment, then, subject to the provisions of sub-clauses (*i*) and (*ii*) of clause (*b*),—

(*i*) in relation to the original financial asset, on the basis of which the assessee becomes entitled to any additional financial asset, means the amount actually paid for acquiring the original financial asset ;

(*ii*) in relation to any right to renounce the said entitlement to subscribe to the financial asset, when such right is renounced by the assessee in favour of any person, shall be taken to be *nil* in the case of such assessee ;

(*iii*) in relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, means the amount actually paid by him for acquiring such asset ;

(*iiia*) in relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial asset, shall be taken to be *nil* in the case of such assessee ;and

(*iv*) in relation to any financial asset purchased by any person in whose favour the right to subscribe to such asset has been renounced, means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount paid by him to the company or institution, as the case may be, for acquiring such financial asset ;

(*b*) in relation to any other capital asset,—

(*i*) where the capital asset became the property of the assessee before the 1st day of April, 1981, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of April, 1981, at the option of the assessee ;

(*ii*) where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of section 49, and the capital asset became the property of the previous owner before the 1st day of April, 1981, means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of April, 1981, at the option of the assessee;

(*iii*) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution.

4.57 Suggestion as received from an expert is given as under :

> "Section 53(1)(a) provides that the cost of acquisition of an investment asset shall be the purchase price of an asset. Purchase price and cost of an asset to the assessee may not be the same. For example, the purchase price of an asset is say Rs. 100 but the assessee had to incur another Rs. 10 on its transportation. The cost of the asset is Rs. 110 and not Rs. 100".

4.58 The Ministry in their replies on the said suggestion stated that 'it **will be considered**'.

4.59 **The Committee find that clause 53 (1)(a) of the Bill provides that the cost of acquisition of an investment asset shall be the purchase price of the asset but the purchase price and cost of an asset to the assessee may not be the same. The Committee, therefore, desire that the clause may be suitably modified accordingly, as agreed to by the Ministry.**

Clause 53(2) read with Seventeenth Schedule of the DTC Bill, 2010

4.60 Clause 53(2) reads as under :

(*2*) The cost of acquisition of an investment asset specified in column (2) of the Seventeenth Schedule, acquired by the mode specified in column (3) of the said Schedule, shall be the cost specified in column (4) thereof.

SEVENTEENTH SCHEDULE

4.61 Seventeenth Schedule of the DTC Bill, 2010 provides as follows :

S. No.	Nature of investment asset	Mode of acquisition	Cost of acquisition of the investment asset
1	2	3	4
6	Shares or any other security.	By way of purchase of the share or such other security.	The amount actually paid by the assessee for acquiring the asset.
9	Shares or any other security.	By way of allotment on the basis of holding any share or any other security without payment.	Nil

4.62 In their written memorandum, Bombay Chartered Accountants' Society and CII on this clause suggested as follows :

"(i) 53(2) provides for cost of acquisition of shares and securities at the value specified in column 4 of the Seventeenth Schedule. The Seventeenth Schedule also provides for the mode of acquisition of the specified asset. Item 9 in the 17th schedule provides for nil cost in respect of bonus shares. Likewise item no 6 provides for price paid for shares acquired by the assessee by way of subscription as the cost of acquisition. Sec. 53(2) r.w. Seventeenth Schedule does not contemplate substitution of fair market value as on 01.04.2000 even if the asset is acquired by the person before such date. The existing sec 55 of ITA expressly allows the assessee an option to substitute fair market value for shares and securities acquired by way of bonus shares etc. There seems to be unintended mistake in DTC in not providing for option to substitute fair market value as on 01.04.2000 to bonus shares or any other shares acquired prior to 01.04.2000.

There is need to provide for option to substitute fair market value as on 01.04.2000 in respect of other categories of assets referred to in Seventeenth Schedule. **(Bombay Chartered Accountants' Society)".**

(ii) Further, the Code may provide that 01.04.2000 shall be substituted as on 01.04.2010 and so on every 10 years there will be change in clause 53. **(CII)".**

Clause 53(2) & (3) read with 314(237) & Seventeenth schedule of the DTC Bill, 2010

4.63 Clause 53 (2) and (3) reads as under :

53. (*2*) The cost of acquisition of an investment asset specified in column (2) of the Seventeenth Schedule, acquired by the mode specified in column (3) of the said Schedule, shall be the cost specified in column (4) thereof.

(*3*) The cost of acquisition of an investment asset acquired by a person by any of the special modes of acquisition, shall be—

(*a*) the cost at which the asset was acquired by the previous owner; or

(*b*) at the option of the person, the fair market value of the asset on the 1st day of April, 2000, if the asset was acquired by the previous owner or the person before such date.

Clause 314(237)

4.64 Clause 314 (237) provides as under :

(*237*) "special modes of acquisition" means—

(*a*) acquisition of converted property by a Hindu Undivided Family; or

(*b*) acquisition by any person in any of the following manner,—

(*i*) upon distribution of any asset on the total or partial partition of a Hindu undivided family;

(*ii*) by way of a gift;

(*iii*) under a will;

(*iv*) by way of succession, inheritance or devolution;

(*v*) upon distribution of any asset on the dissolution of an unincorporated body;

(*vi*) upon distribution of any asset on the liquidation of a company;

(*vii*) upon a revocable or an irrevocable settlement to a trust; or

(*viii*) under a transaction referred to in clause (*d*) to clause (*h*) of sub-section (*1*) of section 47.

Seventeenth Schedule

4.65 As given above

4.66 **Existing provision in the Income Tax Act, 1961**

Cost with reference to certain modes of acquisition.

49. (1) Where the capital asset became the property of the assessee—

(*i*) on any distribution of assets on the total or partial partition of a Hindu undivided family;

(*ii*) under a gift or will;

(*iii*) (*a*) by succession, inheritance or devolution24, or (*b*) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or

(*c*) on any distribution of assets on the liquidation of a company, or

(*d*) under a transfer to a revocable or an irrevocable trust, or

(*e*) under any such transfer as is referred to in clause (*iv*) or clause (*v*) or clause (*vi*) or clause (*via*)or clause (*viaa*)or clause (*vica*) or *clause (*vicb *of section 47*;

(*iv*) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Explanation—In this sub-section the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (*i*) or clause (*ii*) or clause (*iii*) or clause (*iv*) of this sub-section & 55(2).

4.67 Suggestion as received from Bombay Chartered Accountants' Society on this clause is as under :

> "Holding period for assets acquired by 'special mode' – DTC recognizes cost of acquisition to the assessee as the cost to the previous owner in a case where asset is acquired under any of the special modes of acquisition covered by sec 53(3) r.w. 314(237) of DTC. Likewise, in case of asset acquired under mode of acquisition covered by sec 53(2) r.w. Seventeenth Schedule, DTC provides for cost to mean appropriate portion of the cost of original asset. DTC, however, does not provide for aggregation of holding period of previous owner or, as the case may be previous asset to determine the holding of the asset. This seems to be unintended lacuna and requires appropriate change".

4.68 In their written replies to the above said suggestion, the Ministry stated that it **will be considered** for alignment of holding period in line with current law.

4.69 **The Committee desire that as agreed to by the Ministry, the clause relating to determining the holding period for assets acquired by 'special mode' may be suitably modified.**

Clause 53 (6) of the DTC Bill, 2010

4.70 Clause 53 (6) reads as follows :

53(*6*) The cost of acquisition of an investment asset forming part of a bundle of investment assets acquired by any participant, on distribution of the asset to him on account of his retirement from any unincorporated body, shall be the amount determined in accordance with the formula—

A – (B + C)
where,

A= the amount payable to the participant as appearing in the books of account of the unincorporated body on the date of distribution;

B= any amount attributable to the change in the value of the bundle of investment asset on account of revaluation of the bundle, if any, up to the date of distribution; and

C= the cost of acquisition of any other asset, forming part of the bundle acquired by the participant, on distribution of the asset to him on account of his retirement from any unincorporated body if the cost of acquisition has been allowed as a deduction under section 51 in any earlier financial year.

4.71 There is no analogous existing provision in the Income Tax Act, 1961

4.72 ICAI on this clause suggested as follows :

> "The section be modified to provide that fair market value on the date of distribution be considered as cost of acquisition"
> In response, the Ministry have replied as under :
>
> "The alignment of provisions **will be considered** to ensure that cost of acquisition in the hands of participant is correlated with the full value of consideration taken into account on distribution by the unincorporated body".

4.73 **The Committee desire that as suggested by some stakeholders and agreed to by the Ministry, the clause 53 (6) may be suitably modified to provide that fair market value on the date of distribution be considered as cost of acquisition.**

Clause 53 (7) of the DTC Bill, 2010

4.74 Clause 53 (7) provides as under :

53 (*7*) The cost of acquisition of an investment asset shall be "*nil*", in relation to—

(*a*) an investment asset which is self-generated;

(*b*) the asset which is acquired by way of compulsory acquisition and the compensation or consideration for such acquisition is enhanced or further enhanced by any court, Tribunal or other authority; or

(*c*) the asset where the cost of acquisition to the person or the previous owner, if any, cannot be determined or ascertained, for any reason.

Existing provision in the Income Tax Act, 1961

4.75 Provision analogous to 53(7)(c) does not exist in the IT Act.

4.76 Suggestions on this clause as received from ICAI and Bombay Chartered Accountants' Society are given as under :

"(i) 53(7)(c) provides for cost of acquisition as nil if cost thereof in the hands of the person or previous owner is incapable of being determined or ascertained. The existing sec 55(3) of ITA provides for FMV as cost in such circumstances. The DTC provisions may penalize assessee for no fault of his in not knowing the cost of acquisition of previous owner.

If the assessee himself does not know the cost of acquisition and the asset is acquired on or after 01.04.2000, then FMV on the date of acquisition should be taken. However, if the asset is acquired before 01.04.2000 then FMV as on 01.04.2000 should be taken.
Further, sec 53(3)(b) provides, inter alia, to substitute FMV as on 01.04.2000 if the asset was acquired by previous owner before that date. In a situation where the asset acquired is the one which previous owner had acquired prior to 01.04.2000 but in respect of which cost in the hands of previous owner is not ascertainable, there will be conflict of provisions viz. sec. 53(3)(b) and 53(7)(c). Such dichotomy needs to be avoided by making provisions of sec 53(7)(c) subject to provisions in sec 53(3)".

(ii) Appropriate amendment should be made in the said sub-section or the Board may be given power to prescribe rules in this regard. The assessee may also be given an option to consider fair market value as on a particular date". **(ICAI).**

4.77 Comments of the Ministry on these suggestions are given as under :

"Courts have ruled that where the cost of acquisition of a capital asset is indeterminable, the machinery provisions for computing capital gains fail. Therefore, the gain from such asset cannot be subject to income tax. A general provision has therefore been made to the effect that the cost of acquisition of an investment asset shall be deemed to be nil if it cannot be determined or ascertained for any reason, and capital gains will be computed accordingly. A similar provision has been provided in respect of cost of improvement.

Clause 53(3)(b) is not in conflict with 53(7) as 53(7), inter-alia, deals with a case where cost of any asset cannot be determined or ascertained".

Clause 50 to 54

4.78 Clause 50 to 53 are given above.

4.79 Clause 54 reads as under :

54. (*1*) The cost of improvement of an investment asset shall be any expenditure of a capital nature incurred in making any additions or alterations to the asset,—
(*a*) by the person; or

(*b*) by the previous owner, if the asset is acquired by any special mode of acquisition.

(*2*) The cost of improvement of the investment asset, notwithstanding anything in sub-section (*1*), where the asset became the property of the person or the previous owner before the 1st day of April, 2000, shall be any capital expenditure incurred for any addition or alteration to such asset on or after the 1st day of April, 2000.

(*3*) The cost of improvement of an investment asset shall, notwithstanding anything in sub-section (*1*), be "*nil* " in relation to—

(*a*) an investment asset which is self generated;

(*b*) an investment asset being an undertaking or division transferred by way of a slump sale referred to in sub-clause (*l*) of clause (267) of section 314; or

(*c*) any investment asset if the cost of improvement cannot be determined or ascertained, for any reason.

(*4*) Any expenditure deductible in computing the income under any other head of income shall not be taken into account while computing the cost of improvement

4.80 On this Clause, General Insurance Council while forwarding their written memorandum to the Committee suggested as follows:

> **"**For the purpose of computation of income from sale of securities, the provisions of clause 50 to 54 of DTC 2010 relating to calculation of capital gains should be applicable to Non Life Insurance Companies ('NLICs'). It is suggested to grant benefit of indexation while taxing profit on sale of investments.
>
> The industry insists on indexation benefit. In absence of indexation benefit the industry will not have any incentive in making long term investments.

NLICs usually hold investments for the long term. Such investments would be to meet mandated obligations for investments in infrastructure and social sectors as also to meet asset-liability matching requirements. As presently worded, the DTC 2010 provisions would not get the benefit of indexation of the cost of acquisition and will therefore lose on the time value of money. The suggested change is aimed at ensuring that NLICs receive at least the same treatment as other tax assessees in this regard.

Further, NLIC's like other companies are also liable to pay securities transaction tax on purchase and sale of securities. NLIC's also deserve the deduction for long term capital gains and short term capital gains on investments under clause 50 to 54 of the DTC 2010 at par with other tax payers."

4.81 On the above said suggestion, the comments of the Ministry are as follows:

"In case of insurance companies due to their special business model, the taxation is based on book profit which includes deduction for certain provisions like unexpired risk which are otherwise not allowed as expenditure under normal provisions. It is because of this special nature a different computation has been provided under current law in Schedule I and in Schedule VIII of the DTC. Therefore indexation benefit etc. cannot be provided."

Clause 55 – Relief for rollover of investment asset

Clause 55(6)

4.82 Clause 55(6) of the DTC Bill, 2010 reads as under :

55(6) The deduction under this section in respect of capital gain arising from the transfer of an investment asset, specified in column (2) of the Table given below, shall be allowed with reference to the corresponding new investment asset referred to in column (3) of the said Table, subject to the fulfilment of conditions specified in column (4) thereof:

Rollover Relief

Sl. No.	**Description of the original investment asset**	**Description of the new investment asset**	**Conditions**
1	2	3	4
1	Agricultural land	One or more pieces of agricultural land.	The original investment asset was- (i) an agricultural land during two years immediately preceding the financial year in which the asset is transferred; and (ii) acquired prior to one year before the beginning of the financial year in which the transfer of the asset took place.
2	Any investment asset	Residential house.	(2) The new asset shall not be transferred within one year from the end of the financial year in which the new asset is acquired. (i) the assessee does not own more than one residential house, other than the new investment asset, on the date of transfer of the original investment asset; and (ii) the original investment asset was acquired at least one year before the beginning of the financial year in which the transfer of the asset took place. (iii) the new asset shall not be transferred within one year from the end of the financial year in which the new asset is acquired or constructed.

4.83 **Existing provision in the Income Tax Act, 1961**

Section 54B provides that where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say—

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of subsection(1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilized wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Section 54EC provides that where the capital gain arises from the transfer of a long-term capital asset (the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain to the extent of investment shall not be chargeable to tax provided the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees.

(2) Where the long-term specified asset is transferred or converted (otherwise than by transfer) into money at any time within a period of three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long term shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital asset of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money.

Explanation—For the purposes of this section—

(ba) "long-term specified asset" for making any investment under this section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988) or by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956).

Similarly, section 54F provides that capital gain on transfer of certain capital assets arising to an individual or a Hindu undivided family shall not be charged to tax in case of investment in residential house provided the assessee owns only one house.

54H. Notwithstanding anything contained in sections 54, 54B, 54D, 54EC and 54F, where the transfer of the original asset is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period for acquiring the new asset by the assessee referred to in those sections or, as the case may be, the period available to the assessee under those sections for depositing or investing the amount of capital gain in relation to such compensation as is not received on the date of the transfer, shall be reckoned from the date of receipt of such compensation.

4.84 Suggestions as received from Bombay Chartered Accountants' Society and FICCI on this clause are given as under :

> "1. Sec. 55 provides for relief for roll over of investment asset into new asset. The acquisition of new asset is required to be made within specified time. The acquisition period is linked to date of transfer of original asset. As against that in certain cases capital gains is subjected to tax in the year

of receipt of consideration, which in the nature of things, would be a later year than the year of transfer. In the absence of consideration received, it would be difficult for the assessee to invest in the roll over asset. Under the identical cases, the existing ITA and/or CBDT has relaxed the requirement of investment to the year of receipt of consideration. Kindly refer, following:

Compulsory acquisition (sec 54H of ITA expressly provides for period of investment with respect to year of receipt of compensation.)

Capital gains – taxability of deferred consideration. The DTC should provide for the year of taxability of deferred consideration upon its receipt / accrual for the following reasons:

-In many transactions, consideration is deferred to a future date and which is dependent on the happening of a future uncertain event.

- It is a concept that is widely used in developed countries.

- Conversion of investment asset into stock in trade (presently, by CBDT circular no. 791 dated 02.06.2000 investment period is linked to year of sale of stock in trade.)

- Insurance compensation receipt (even in ITA, we have same difficulty today)

2. Further, under ITA, a person is entitled to invest in notified bonds and claim exemption u/s 54EC. Similar provision should be introduced in DTC. This would be of great help in case of retired persons, widows and people in old age etc. who need to protect their capital base and also against inflation in the economy.

3. The capital gains exemption scheme to reinvestments in assets beyond residential house property and agricultural land may be reinstated, as at present.

4.85 While submitting their comments on the above said suggestions, the Ministry in their written submission stated as under :

"Relaxation in context of compulsory acquisition **will be considered**. Conversion of investment asset into stock in trade is treated as transfer for the purposes of computation of income under the head 'Capital Gains'. Clause 48 already provides that the income from such transfer shall be the income of the transferor in the financial year in which such asset so converted or treated is sold or otherwise transferred.

Further, the roll over benefits have been rationalized to ensure investment in productive assets only".

4.86 **The Committee desire that necessary modifications may be made in regard to compulsory acquisition of investment assets, as agreed to by the Ministry.**

Clause 46 to 55 read with clause 60

4.87 Capital gains is an income from ordinary sources and subject to tax on net basis (in accordance with the provisions of section 46 to 55) and at the applicable marginal rate.

Clause 60 - Aggregation of income under a head of income

4.88 Clause 60 reads as under :

60. (*1*) Subject to other provisions of this section, the income from each source falling under a head of income for a financial year shall be aggregated and the income so aggregated shall be the income from that head for the financial year.

(*2*) The income from the transfer of each investment asset during the financial year, as computed under section 49, shall be aggregated and the net result of such aggregation shall be the income from the capital gains, for the financial year.

(*3*) The income from capital gains shall be aggregated with the unabsorbed preceding year capital loss, if any, and the net result of such aggregation shall be the current income under the head “Capital gains”.

(*4*) The income under the head “Capital gains” shall be treated as ‘‘*nil*’’ if the net result of aggregation under sub-section (*3*) is negative and the absolute value of the net result shall be the amount of ‘‘unabsorbed current capital loss’’, for the financial year.

4.89 **Existing provision in the Income Tax Act, 1961**

Long term capital gain (other than securities liable to STT) are taxed at the rate of 20% and short term gain (other than securities liable to STT) are liable to tax at the applicable marginal rate.

Short term capital gain on securities liable to STT are taxed at the rate of 15%. Set off of loss from one head against income from another.

71. (1) Where in respect of any assessment year the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has no income under the head "Capital gains", he shall, subject to the provisions of this Chapter, be entitled to have the amount of such loss set off against his income, if any, assessable for that assessment year under any other head.

(2) Where in respect of any assessment year, the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has income assessable under the head "Capital gains", such loss may, subject to the provisions of this Chapter, be set off against his income, if any, assessable for that assessment year under any head of income including the head "Capital gains" (whether relating to short-term capital assets or any other capital assets).

Losses under the head "Capital gains".

74. (1) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(*a*) in so far as such loss relates to a short-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset;

(*b*) in so far as such loss relates to a long-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset not being a short-term capital asset;

(*c*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(2) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

4.90 On these clauses, CII in their written memorandum submitted to the Committee suggested as follows :

"1. Since capital gain is sought to be taxed at the normal rates, then the capital loss should be allowed to be carried forward and set-off against any other head of income and not necessarily capital gains only.

2. The bill does not contain any transitional provision to provide the treatment for carry forward of losses incurred prior to the introduction of DTC. A transitional provision to the effect needs to be inserted.

3. A general overriding provision is required to be made to take care of the transitory period so that the switch over from ITA to DTC does not cause unnecessary hardship". **(CII)**

The comments of the Ministry on these suggestions are as follows :
"1. The nature of income i.e. capital gains is different from other heads of income, as the earning are derived from the capital whereas capital gain is from transfer of capital itself. Therefore loss under head capital gains is ring fenced even in the current law and the same provision is carried to DTC.

2.&3. Necessary provision for treatment of losses remaining to be carried forward and set off as per the provisions of the IT Act, on the date on which DTC comes into effect **will be considered**.

4.91 **The Committee desire that suitable amendment be made in the clause for providing necessary provision for treatment of losses remaining to be carried forward and set off as per the provisions of the present Income Tax Act on the date on which DTC comes into effect, so that switch over from IT Act to Direct Taxes Code does not cause undue hardship.**

CHAPTER – V- INCOME FROM RESIDUARY SOURCES

5.1 Income chargeable to tax under the head ‘other sources' covers those items which are not covered under any other head of income but is chargeable to tax under the law. In the Direct Taxes Code (DTC) it is named as ‘income from residuary sources'. Certain deductions and exemptions are allowed and the resultant is chargeable to tax. Clause 56 of the DTC deals with computation of ‘gross residuary income' and Clause 57 provides for deductions or exemptions in respect of eligible items comprised in “gross residuary income”.

Proposed clauses in the DTC Bill, 2010

Clause 56 – Income from residuary sources

5.2 Clause 56 reads as under :

> “**56.** The income of every kind falling under the class ‘Income from ordinary sources’, shall be computed under the head “Income from residuary sources”, if it is required to be included in computing the income includible under any of the heads of income specified in items A to D of section 14”.

5.3 **Existing provision in the Income Tax Act, 1961**

> “56(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head “Income from other sources”, if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E**”.**

Clause 58 – Gross residuary income

5.4 Clause 58 (2)(a) reads as under :

> “58(2)(a) The gross residuary income shall, in particular and without prejudice to the generality of the provisions of sub-section (1), include the following, namely:—
>
> dividends, other than dividends in respect of which dividend distribution tax has been paid under section 109.

5.5 **Existing provision in the Income Tax Act, 1961**

"**56(2)** In particular, and without prejudice to the generality of the provisions of subsection (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—
(i) dividends.

5.6 On this clause, the Bombay Chartered Accountants' Society in their written memorandum submitted to the Committee suggested as follows :

> "U/s 58(2)(a) the dividend other than dividend in respect of which DDT is paid is taxable as income. Under the present provision dividend referred to in sec 115-O is exempt. The reference to exclusion of dividend on which DDT 'has been paid' is unwarranted as it will be impossible for the shareholders to provide a proof of DDT paid by the company. Therefore, the exclusion should be on the lines of present exemption provided as aforesaid. Similar change is also required in clause 19 & 20 of 6th schedule".

5.7 The Ministry in response to the above said suggestion stated that the issue raised **will be considered**.

5.8 One more suggestion on this Clause, as received from an expert is given as under:

> "The exemption in respect of dividends will be allowed only if DDT has been paid by the company. Similarly, under item no 20 of the sixth schedule to the bill, income received from any equity-oriented fund will be exempt from tax only if tax on the distributed income has been paid by the mutual fund. It should be aligned with the IT Act."

5.9 The Ministry while accepting the said suggestion stated in their written information that 'it **will be considered**'.

5.10 The provisions pertaining to 'income from residuary sources' corresponds to 'income from other sources' in the Income Tax Act. Yet, the Chambers of Commerce in particular have pointed to the serious deficiencies in these provisions and have been critical of the formulations as proposed. These issues have been dealt with in appropriate places. With specific reference to the provisions of Clause 58 (2) (a), as has been assured, the Committee expect that the exemption provided for dividends on which Dividend Distribution Tax (DDT) has been paid is recast on the lines of the existing provisions of the Income Tax Act where the onus of

proving payment of DDT is not on the assessee or taxpayer. The Committee also desire that concomitant changes to this effect are also made in the relevant clauses of schedule 6 i.e. Clauses 19 and 20. Further, the expenditure incurred on earning dividend should be made an "allowable expenditure".

Clause 58(2)(k)

5.11 Clause 58(2)(k) reads as under :

> "58(2)(k) The gross residuary income shall, in particular and without prejudice to the generality of the provisions of sub-section (*1*), include the following, namely —
>
> (*k*) the amount of voluntary contribution received by a person, other than an individual or a Hindu undivided family or a non-profit organisation, from any other person.

5.12 On this clause, the Bombay Chartered Accountants' Society in their written memorandum suggested as follows :

> "Sec 58(2)(k) provides that the amount of voluntary contribution received by a person (other than individual, HUF & NPO) is to be treated as income. It is not clear as to what is intended to be covered under such general provision. In any case, the items to be covered under this head are very large including gifts. Therefore, this should be omitted".

5.13 On this suggestion, the reply of the Ministry is given as under :

> "The Income Tax Act currently has provisions for inclusion of voluntary consideration in the income of NPO and money or any property without consideration or inadequate consideration in the income of individual or HUF. As an anti avoidance measure, the receipt of voluntary contribution has also been included in the income of other persons".

Clause 58(2)(m)

5.14 Clause 58(2)(m) provides as under :

> "58(2)(m) The gross residuary income shall, in particular and without prejudice to the generality of the provisions of sub-section (*1*), include the following, namely:—
>
> (*m*) any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if—

(*i*) the payment or aggregate of payments is in respect of any expenditure referred to in clause (*a*) of sub-section (*1*) of section 59;

(*ii*) the expenditure has been allowed as a deduction in any earlier financial year on the basis of the liability incurred thereon;

(*iii*) the payment or aggregate of payments exceeds a sum of twenty thousand rupees; and

(*iv*) it has not been incurred in such cases and under such circumstances, as may be prescribed".

5.15 **Existing provision in the Income Tax Act, 1961**

"**40A(3)** Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

(3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees:

Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors :]

[Provided further that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words "twenty thousand rupees", the words "thirty-five thousand rupees" had been substituted".]

5.16 On this clause, the Bombay Chartered Accountants' Society in their written memorandum suggested as follows :

"Any payment or aggregate of payment made to a person in a day, otherwise than by account payee cheque etc., in excess of prescribed limit, is to be treated as income. This provision is primarily on the lines similar to disallowance of expenses u/s 40A(3) of the ITA which applies only to computation of business income.

Therefore, it is absurd to treat a payment as an income. Again, applying this to every person and that to under this head of residuary sources will create havoc though it is provided that effectively this may not apply in such cases and such circumstances, as may be prescribed.
In view of above, it is suggested that If the disallowance of such expenses is to be made, the same should be provided in sec 59 and the same cannot be treated as income".

5.17 In response to the above said suggestion, the Ministry in their written replies stated that :

"The provision is to discourage cash payment above a certain limit particularly in view of spread of banking services across India and to ensure genuine claim of expenditure. Further the rules, to be prescribed, would provide for mitigating circumstances wherein the provision shall not be attracted. Currently under the Income-tax Act provision of section 40A(3A) treat the expenditure already allowed as income if payment is subsequently made in cash in excess of prescribed threshold. Therefore there is no inconsistency in treating payment as an income".

Clause 58(2)(v)

5.18 Clause 58(2)(v) reveals that :

"**58(2)(v)** The gross residuary income shall, in particular and without prejudice to the generality of the provisions of sub-section (*1*), include the following, namely —

(*v*) any amount received, as advance, security deposit or otherwise, from the long term leasing, or transfer of whole or part of, or any interest in, any investment asset".

Suggestions as received on this clause are given as under :

"**(i)** Any amount received as advance, security deposit or otherwise, from the long term leasing or transfer of whole or part of any interest in investment asset, is to be treated as income. This is totally against the basic canon of taxation of income as the same are in the nature of subsisting liabilities notwithstanding the fact that deduction on payment is provided in section 59 for the same.

This will raise large number of practical issues also on interpretation. For example, if there is no income at all in the year of repayment, the assessee would unnecessarily face the problem.

In view of above, this provision has to be deleted. **(Bombay Chartered Accountants' Society).**

(ii) Capital receipts such as lease rent are proposed to be taxed. Certain tests should be prescribed to resolve the controversy. Some of the tests (with respect to lease) devised under the ITA are:

- Whether the assets are being commercially exploited by letting them out or whether it is being let out for the purpose of enjoying the rent.

- Whether any significant services are provided in addition to leasing of the assets.

The treatment accorded to such assets by the assessee in his financial statements i.e. whether he treats such assets as capital investment or stock in trade". **(CII)**

5.19 The Ministry in their written replies to the above said suggestion stated as under :

"The provision is incorporated to counter those long-term lease transactions where the advance/security deposit is actually in nature of sale proceed of the investment asset but disguised as long-term lease transaction. The period of such lease is 12 years or more. However, deduction is allowed whenever any repayment is made.

In isolated cases where there is no other income under any head in the year of receipt, the consequential loss will be allowed to be carried forward for set off indefinitely against future income under any head".

5.20 **While the provisions formulated under Clause 58(2)(k) (voluntary contribution to be treated as income) and 58(2)(m) (payments made in cash in excess of Rs. 20,000 to be treated as income) are, as per the Ministry, intended to be anti-avoidance measures, the Committee express reservation on the proposal to leave the framework pertaining to these provisions to the rules to be framed as per delegated legislation. As pointed out, provisions worded in general or perhaps loose terms would be open to interpretation and lead to unwarranted harassment of the assesses as well as litigation. The Committee, therefore, desire that the scope of the provisions is made**

comprehensive and clear in the substantive law and not left to delegated legislation.

Clause 58(2)(y) read with 59(3)(d)

5.21 Clause 58(2)(y) and 59(3)(d) provide as under :

> **"58(*2*)** The gross residuary income shall, in particular and without prejudice to the generality of the provisions of sub-section (*1*), include the following, namely:—
>
> **(*y*)** any amount including bonus, if any, received or receivable under a life insurance policy from an insurer on maturity or otherwise.
>
> **59(3)(d)** the amount included in income under clause (*y*) of sub-section (*2*) of section 58 in respect of an insurance policy where—
>
> (*i*) the premium paid or payable for any of the years during the term of the policy does not exceed five per cent. of the capital sum assured; and
>
> (*ii*) the amount is received only upon completion of original period of contract of the insurance".

5.22 **Existing provision in the Income Tax Act, 1961**

> "10.In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—
>
> (*10D*) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—
>
> (*a)* any sum received under sub-section (3) of section 80DD or subsection (3) of section 80DDA; or
>
> (*b*) any sum received under a Keyman insurance policy; or
>
> (*c*) any sum received under an insurance policy issued on or after the 1st day of April, 2003 in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum assured:
>
> Provided that the provisions of this sub-clause shall not apply to any sum received on the death of a person:
>
> Provided further that for the purpose of calculating the actual capital sum assured under this sub-clause, effect shall be given to the *Explanation* to sub-section (3) of section 80C or the *Explanation* to sub-section (2A) of section 88, as the case may be.

Explanation—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person".

5.23 Institute of Chartered Accountants of India on this clause suggested as follows :

"(i) The said amount be taxed as capital gains, giving benefit of the indexation as these are not fixed return investments. Further, premiums paid from year to year may be treated as cost of acquisition giving indexation benefits.

(ii) The provision should be done for Grand-fathering the policies taken prior to 1st April, 2011".

5.24 The Ministry in their replies to the above said suggestions stated as under:

"(i) In view of the provisions of section 10(10D) of the IT Act, 1961, any income received under a life insurance policy issued on or after 01.04.2003 in respect of which the premium payable for any of the years exceeds 20% (i.e. less than 5 year term policy), is not exempt and accordingly taxable under sec 56 of the ITA under the head ' Income from other sources' after allowing expenditure paid out or expended wholly and exclusively for the purpose of earning such income.

Therefore DTC has not changed the characterization of income accruing as a result of insurance policy. Further, this income is not in the nature of capital gain.

(ii) **Will be considered**".

(*iii*) to any person on behalf, or for the individual benefit, of such shareholder."

5.25 Under Direct Taxes Code, all proceeds / benefits of life insurance policies are tax exempt subject to the condition of sum assured being at least 20 times the annual premium, as against 5 times the annual premium every year currently. The Committee are of the opinion that increasing the tax exempt sum assured to premium ratio of 20 times is too drastic a change and it will have an adverse impact on the life insurance sector as such. The Committee would therefore, recommend a more reasonable multiple / ratio of 10 times the annual premium, which will fulfill the desired

objective of ensuring adequate protection in insurance. The Committee would further suggest that refund of sum assured under money back policies as well as accrued bonuses should also be treated as 'sum assured' payable on the happening of certain event of life and should not be taxable under the Code. As regards the requirement for grandfathering, the Committee would recommend that the afore-mentioned provisions on life insurance policies should apply only on those policies sourced post-implementation of the Code.

CHAPTER – VI -CONTROLLED FOREIGN COMPANIES

6.1 Clause 58 of the Code deals with Controlled Foreign Companies (CFC) which is a new proposal designed to limit artificial deferral of tax by using offshore low taxed entities. Thus, passive income of foreign companies controlled directly or indirectly by Indian shareholders is sought to be brought to tax. When profits of such foreign companies are not distributed to the Indian shareholders, they will be deemed to be dividends in the hands Indian shareholders and accordingly taxed. It has been submitted to the Committee that at a juncture when Indian companies have started to make substantial outbound investments, introducing the CFC regulations would adversely affect the Indian market restricting the overseas acquisitions by Indian companies. It is common practice to take over companies outside India through intermediate holding companies, which are incorporated to optimize tax implications outside India. It has been suggested by several memorandists to the Committee that the CFC Regulations be deferred, or alternately, the CFC regulations should be applied to only one level of subsidiaries outside India.

6.2 The Clause 69 reads as under:

(*2*) The gross residuary income shall, in particular and without prejudice to the generality of the provisions of sub-section (*1*), include the following, namely:—
(*u*) any amount of attributable income of a controlled foreign company to a resident in accordance with the Twentieth Schedule;

THE TWENTIETH SCHEDULE

[*See* sections 58(2)(*u*)113(2)(*k*) and 291(9)(*c*)]

COMPUTATION OF INCOME ATTRIBUTABLE TO A CONTROLLED FOREIGN COMPANY

1. The total income of a resident assessee for a financial year shall include an income which is attributable to a Controlled Foreign Company as computed in accordance with paragraph 3.

2. The attributable income referred to in paragraph 1 shall be included in the total income of the assessee for the financial year, the year in which the accounting period of the company ends.

3. The amount of attributable income shall be computed in accordance with the formula—

A x B x C
100 D

Where A = specified income of the Controlled Foreign Company as computed under
paragraph 4;
B = percentage of—
(*i*) value of capital,
(*ii*) voting share or interest,
whichever is higher, held by the assessee, directly or indirectly, in the Controlled Foreign Company;
C = number of days out of D, the voting shares or capital or interest has been held by the assessee in the Controlled Foreign Company;
D = number of days the company remained as a Controlled Foreign Company during the accounting period;

4. The specified income of the Controlled Foreign Company shall be computed in accordance with the formula—

(A + B – C – D) x E
F

Where A = net profit as per profit and loss account of the Controlled Foreign Company for the accounting period prepared in accordance with the International Financial Reporting Standards issued by the International Accounting Standards Board, Generally Accepted Accounting Principles, International Accounting Standards or accounting standards notified under the Companies Act, 1956, as the case may be;

B = amounts set aside to provisions made for meeting liabilities or diminution in value of assets, other than ascertained liabilities;
C = amount or amounts of interim dividend paid out of profits of the accounting period, if such dividend is not debited to profit and loss account;

D = the loss to the extent it has not been previously taken into account under this paragraph in respect of an earlier accounting period, where there is a net loss of the Controlled Foreign Company for such accounting period;

E = number of days during which the company is a Controlled Foreign Company during its accounting period;

F = number of days in the accounting period.

5. In this Schedule—

(*a*) “Controlled Foreign Company” means a foreign company which satisfies the following conditions, namely:—

(*i*) for the purposes of tax, it is a resident of a territory with lower rate of taxation;

(*ii*) the shares of such company are not traded on any stock exchange recognised by law of the territory of which it is a resident for the purposes of tax;

(*iii*) one or more persons, resident in India, individually or collectively exercise control over the company;

(*iv*) it is not engaged in any active trade or business;

(*v*) the specified income of the company determined in accordance with the provisions of paragraph 4 exceeds twenty-five lakh rupees;

(*b*) one or more persons resident in India shall be said to exercise control over the company if —

(*i*) such persons, individually or collectively possess or are entitled to acquire directly or indirectly shares carrying not less than fifty per cent. of the voting power or not less than fifty per cent. capital of the company;

(*ii*) such persons, individually or collectively are entitled to secure that not less than fifty per cent. of income or asset of the company shall be applied directly or indirectly for their benefit;

(*iii*) such persons, individually or collectively, exercise dominant influence on the company due to special contractual relationship;

(*iv*) such persons, individually or collectively, have, directly or indirectly, sufficient votes to exert a decisive influence in a shareholder meeting of the company.

(*c*) a company shall be regarded as a resident of a territory for the purposes of tax—

(*i*) if in an accounting period it is liable to tax in the territory by reason of its place of incorporation or the place of management;

(*ii*) if in any accounting period there are two or more territories falling in sub-clause (*i*) above, then, the company shall in that accounting period be regarded for purpose of this Schedule as a "resident" of any one of them—

(*A*) if, throughout the accounting period, the company’s place of effective management is situated in one of those territories only, in that territory; and

(*B*) if, throughout the accounting period, the company’s place of effective management is situated in two or more of those territories, then, in one of them in which, at the end of the accounting period, the greater amount of the company’s assets is situated; and

(*C*) if neither item (*A*) nor item (*B*) above applies, then, in one of the territories falling within sub-clause (*i*) above in which, at the end of the accounting period, the greater amount of the company's assets is situated; and

(*iii*) if in any accounting period a territory is not falling within sub-clause (*i*) above, then, for the purposes of this Schedule it shall be conclusively presumed that the company is in that accounting period resident in a territory with a lower rate of taxation;

(*d*) "territory with a lower rate of taxation" means a country or a territory outside India in which the amount of tax paid under the law of that country or territory in respect of profits of a company that accrue in any accounting period, is less than one half of the corresponding tax payable on those profits computed under this Code, as if the said company was a domestic company;

(*e*) a company shall be deemed to be engaged in active trade or business if and only if —

(*i*) it actively participates in industrial, commercial or financial undertakings through employees or other personnel in the economic life of the territory of which it is resident for tax purposes; and

(*ii*) less than fifty per cent. of income of the company during the accounting period is of the following nature, namely:—
(*A*) dividend;

(*B*) interest;

(*C*) income from house property;

(*D*) capital gains;

(*E*) annuity payment;

(*F*) royalty;
(*G*) sale or licensing of intangible rights on industrial, literary or artistic property;

(*H*) income from sale of goods or supply of services including financial services to—

(*I*) persons that directly or indirectly control the company;

(*II*) persons that are controlled by the company;

(*III*) other persons which are controlled by persons referred to in sub-item (*I*);

(*IV*) any associated enterprise;

(*I*) income from management, holding or investment in securities, shareholdings, receivables or other financial assets;

(*J*) any other income falling under the head income from residuary sources;

(*f*) "associated enterprise" shall have the meaning as assigned to it in clause (5) of section 124.

6. (*1*) Unless otherwise provided, each period of twelve months ending with the 31st day of March shall be the accounting period of a company.

(2) Where a company regularly adopts a period of twelve months ending on a day other than the 31st day of March for the purpose of—

(*i*) complying with the tax law of the territory of which it is a resident for tax purposes; or

(*ii*) reporting to its shareholders, then the period of twelve months ending with such other day shall be the accounting period of the company.

(*3*) The first accounting period of the company begins from the date of its incorporation and end with the 31st day of March or such other day, as the case may be, following the date of such incorporation, and the later accounting period shall be the successive periods of twelve months.

(*4*) If the company ceases to exist before the end of accounting period, as mentioned in sub-paragraphs (*1*), (*2*) and (*3*), the accounting period shall end immediately before the company ceases to exist.

7. A resident assessee shall furnish the details of its investment and interest in any entity outside India in such form and manner as may be prescribed.

6.3 No such provision exist in the present Act.

6.4 The following suggestions have been received on the CFC proposals from various quarters:

i) Grant underlying tax credits for the taxes paid by the foreign subsidiaries or foreign companies on its profits out off which the dividend is distributed. This would first of all obviate any necessity to have the foreign subsidiaries. This would also encourage the Indian companies to repatriate profits to India by way of dividends as no double taxation would be attracted. A reference in this connection can be made to sec 50A of the Singapore Income Tax Act, which gives unilateral underlying tax credits for the foreign dividends received. (ICAI)

ii) Clause 4

The clause deals with computation of attributable income of the CFC and the amounts of interim dividends are to be reduced from the profits for the purposes of computation. To avoid double taxation of same income, all dividends should be excluded from profits. (ICAI)

iii) Clause 5

The clause, inter-alia, defines what is a CFC, Clause 5(a)(iii) provides one of the conditions viz. that one or more persons, resident in India, individually or collectively exercise control over the company. In clause 5(b)(iii) & (iv) the control is defined to include dominant influence due to special relationship or sufficient votes to exercise dominant influence in a shareholder meeting. The phrases 'dominant influence' or 'decisive influence' would give avoidable discretion to the AO. A shareholder having veto power [shareholding 40%] may be classified as decisive influence. These two clauses may possible be altogether removed. (ICAI)

iv) For reckoning the threshold of 50% of voting power / capital on a collective basis, only residents who are acting in concert and are few in number (say, 5 person in the aggregate should be considered). Alternatively, the 50% control test should be restricted to cases where an individual owns more than 10% voting right & jointly with other who act in concert own more than 50%. It should be clarified that in the context of determination of control test linked to capital as provided in paragraph 5(b)(i), capital for this purposes should not include loan creditors. (FICCI)

v) Clause 5(d)

Applicability of the CFC refers to 'amount of tax paid', in the context of 'territory with a lower rate of taxation'; the reference should be to 'tax rate', instead of to 'amount of tax paid'. It should be clarified that 'tax payable' in offshore jurisdiction would be effective tax rate after taking into account any foreign tax credit in that jurisdiction. (Bombay Chambers)

vi) Clause 5(e)

Comparison at income level is incorrect. A manufacturing company may be incurring loss in active business but may still have passive income

like interest, dividends etc. A company with long gestation period may have interest or royalty income. (ICAI)

Sub-clause H provides that if the income is pertaining to supply of goods and services to a related entity, the concern would qualify as CFC. There are companies who have set up global sourcing or distribution companies purely for business reasons and not for tax considerations. Since we already have transfer pricing regulations, they are not entitled to transfer profits outside India. It would be unfair to cover such companies. (ICAI)

vii) A 'motive' test may be prescribed for trigger of CFC regulations. This test may provide that a resident assessee would not be covered within the CFC regime if he could demonstrate that the overseas company has not been designed with the primary purpose of deferring income-taxes in India. (FICCI)

viii) Consistent with the primary framework of the CFC regime being an anti-avoidance provision, its trigger should not be activated where distribution of income from the foreign company is not permissible for any reason (such as exchange control regulations, regulatory lock-in period, losses, etc.) (FICCI)

ix) While undergoing consolidation of income, the loss of the CFC should be allowed to be clubbed and set off against the profit of the income company. Also, the provisions should specifically permit carry forward and set off of losses incurred by a CFC in the hands of the Indian holding company. (Bombay Chamber)

x) Given that Indian outbound investment is still at the nascent stage, the CFC regime should be deferred. (Bombay Chamber)

6.5 The Ministry of Finance has given their comments on these suggestions as mentioned below:

i) The underlying tax credit if any is granted through Double Taxation Avoidance Agreements (DTAA) and is country specific. It therefore cannot be provided as general rule through domestic law.

ii) Only current year's income of CFC is attributed to resident share holders. Therefore, interim dividend paid out of current year's profit is allowed as deduction and earlier year's dividend cannot be allowed.

iii) Internationally, in addition to the objective test this type of subjective test is required as the threshold of exercising dominant influence is different in different jurisdictions. In suitable cases CBDT has power to issue circular for guidance of the assessing officers.

iv) One of the conditions of being a CFC is that company's shares are not listed in any stock exchange. Therefore, only privately controlled companies get affected. Experience shows that such companies are generally controlled by one or two groups through multitude of relatives and entities. Therefore, the condition of 10% individual holding can easily be circumvented. In such circumstances condition of joint or several ownership in excess of 50% to define control over a corporation is most appropriate legislation.

v) Suitable amendment will be considered to clarify that foreign tax credit in respect of actual tax paid in any other territory will be included in tax paid for the purposes of para 5(d) of the Schedule.

vi) A manufacturing company may not have any attributable profits and even if some profits are there the income threshold provided in the schedule will take care of such small income and also the cases of companies with long gestation period.

vii) Internationally, such provisions have been incorporated to prevent tax planning through use of base companies. Transfer pricing is applicable for preventing shifting of excess profits and does not help in expediting repatriation of profits.

viii) The motive test is inbuilt in the provision where the entity fails the active business test then only it is treated as CFC. The active business test in its ambit has motive test as the underlying idea.

Safe harbour provisions will be considered to take care of exceptional circumstances.

ix) Under the present scheme of taxation, the loss of subsidiary cannot be clubbed with the holding company. There is no concept of group taxation in India

x) It will not hamper either competitiveness or investment potential of Indian corporate. The applicability of CFC rules gets triggered only if entity is situated in a tax haven or very low tax jurisdiction. Most of developed and developing countries which are preferred destination for real business activity remain out of scope of CFC.

6.6 **While recognizing the need and rationale for introducing the CFC framework as an anti-avoidance measure to bring to tax passive incomes of foreign entities particularly in a tax haven or very low tax jurisdiction, controlled directly or indirectly by Indian entities, the Committee would recommend that suitable amendment may be carried out in para 5(d) of the schedule dealing with a territory with lower rate of taxation in order to clarify that foreign tax credit in respect of actual tax paid in any other territory will be included in the tax paid for the purposes of para 5(d) of the schedule. A mechanism for granting tax credit should be allowed for the foreign income tax paid by CFC. The control tests prescribed in Clause 5(b) of the 20th schedule presently widely defined by way of terms such as 'directly or indirectly', 'dominant influence' and 'decisive influence' require to be more precisely defined in scope so as to avoid ambiguities and unnecessary litigation arising therefrom. As doubts have arisen on the taxability of profits of a CFC, it may be clarified that the attributable income of the persons resident in India, who are exercising control over the CFC, should be only such amount of current profits of a CFC, which are capable of being distributed as per the applicable laws of the foreign country. On the whole, the Committee are of the view that since the triggering points for invoking CFC regulations are so many, cumulative or combined trigger of two or three points / criteria should be stipulated instead of merely a single-point trigger.**

CHAPTER – VII - TAX INCENTIVES

7.1 In the Direct Tax Code 2010, the deduction on personal savings and certain expenses have been rationalized and only long-term savings and expenditure on life and health insurance and on children's education are being incentivised. Tax incentives on savings under the DTC have been provided only to a few long-term approved funds so as to promote long-term savings and old age social security. The Code allows a maximum deduction of fifty thousand rupees for premium paid on life insurance, health insurance and tuition fees.

7.2 Sections 80-IC, 80-ID and 80-IE of the existing Act carry provisions related to area-based deductions. The Code does not provide for area-based deduction.

Incentives for Industry

7.3 The Bombay Chartered Accountants Society has suggested that to boost the Investment in new industries of the new specified areas, following proposals of the present Act which are missing should be included in proposed DTC Bill:-

I) 80IC- Undertakings in certain special category states
II) 80ID-Hotels and convention center in specified area
III) 80IE- Undertakings in NE states
IV) 80JJA- Business of collecting and processing of bio-degradable waste
V) 80JJAA-Employment of new work men.

7.4 FICCI, ASSOCHAM, Bengal Chamber of Commerce have also advocated for area based deductions. According to these associations this may adversely impact investments into some of the underdeveloped regions like north-east, parts of Uttarakhand, Himachal Pradesh etc.

7.5 The Government is of the view that area based profit linked tax incentives are distortionary and prone to misuse by transfer of profits from non-exempt to exempt entity or inflation of profits in the exempt entity. All profit-linked deductions have been phased out in the DTC. The policy is to have moderate tax rates for all with minimal exemptions.

7.6 Investment-linked deduction has already been provided for priority sectors in the DTC in the Thirteenth Schedule.

7.7 Neither the Income Tax Act, 1961 nor the Code provides for Carbon Credit based deduction. FICCI has suggested to motivate the corporate sector for reduction in carbon emission, income derived from transfer of carbon credits should be exempted under DTC regime.

7.8 The Ministry has replied that the carbon credit scheme is itself an incentive. There is no justification to provide any incentives in respect of income derived from transfer of carbon credits as it is a normal business income. The best incentive is a moderate overall tax rate with minimal exemptions.

7.9 Industry association like ASSOCHAM & Bengal Chambers of Commerce are of the view that Profit linked deductions (which have been replaced by investment linked incentives) should be continued as it helps in attracting investments into core infrastructure areas of economy and have helped building up of the nation's basic infrastructure in power, ports, telecommunication, highways, etc.

7.10 However, the Government has replied that their suggestions are not acceptable as profit-linked deductions are inherently distortionary. Besides, investment-linked deductions would also help in building up the nation's basic infrastructure.

7.11 The Centre for Urban Planning and Development has given a memorandum to the Committee suggesting that in order to give fill up to the housing sector, the business of developing and building a housing project under a prescribed scheme for affordable housing as specified under Section 35 AD (5) (ad) of the Income Tax Act may be included in the Thirteenth Schedule, preferably below clause 1 (j) of the Thirteenth Schedule of the Code for the purpose of investment linked deduction. The Ministry has agreed to include this specified business appropriately in the Code.

7.12 The Committee note that manipulations at taxpayers' end and lax enforcement of the tax laws by the Department have marred the efficacy of the profit linked incentives. The Committee, therefore, endorse the phasing out of profit linked incentives and replacing them with investment-linked

incentives, which will foster growth and development of key sectors of the economy. However, the Committee believe that in order to encourage business and promote industrial investment in neglected areas or regions requiring special attention, a few selected district based incentive schemes may be considered on investment linked basis in respect of identified industrially backward districts in the country. The existing schemes should not, however, be dis-continued half-way and may be allowed to last the course. Further, the Committee would recommend that the business of developing and building a housing project under a prescribed scheme for affordable housing as specified under Section 35 AD (5) (ad) of the Income Tax Act may be included in the Thirteenth Schedule, preferably below clause 1 (j) of the Thirteenth Schedule of the Code for the purpose of investment linked deduction.

The Committee would further recommend that the health-care and education sectors may be considered for inclusion under 'infrastructure'. The proposed tax deduction under 11th Schedule for hospitals may also be modified so as to provide that the exemption is available for any five years out of the ten years period in order to give boost to the health-care sector for wider coverage.

Savings

7.13 Clause 69 of the Code deals with the deduction for savings. The Clause reads as under:

> 69(1) A person, being an individual, shall be allowed a deduction for savings in respect of the aggregate of the sum referred to in sub-section (2) to the extent of one lakh rupees.
>
> (2) The sum referred to in sub-section (1) shall be the amount paid or deposited by the person in a financial year as his contribution of any approved fund to an account of the individual, spouse or any child of such individual.

7.14 The relevant provision in the Income Tax Act 1961 dealing with deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc. is as follows:

80C.(1) In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted, in accordance with and subject to the provisions of this section, the whole of the amount paid or deposited in the previous year, being the aggregate of the sums referred to in subsection (2), as does not exceed one lakh rupees.

7.15 The CII has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

The amount of deduction on account of assessee's contribution to specified funds like provident fund, pension fund etc. is to be restricted to Rs 1 lakh in contrast to the earlier limit of Rs 3 lakhs prescribed under first DTC draft. Further, certain investment options such as mutual funds, home loans, NABARD and other savings scheme have not been included in the scope of the above.

It is suggested that investments which have been excluded in DTC vis-à-vis Income-tax Act should be reinstated. Further, the amount of benefit allowable to the assessee for his contribution to specific funds should be increased to Rs. 3,00,000/-.

7.16 The Ministry reply to the above suggestions is as follows:

Though the limit provided in clause 69 is one lakh rupees, an additional deduction of fifty thousand rupees is also available under clauses 70, 71 and 72.

All savings that are eligible for deduction under the existing law cannot be included under DTC because the latter seeks to incentivise only long-term social security funds, life and health insurance and expenditure on education of children. In other words, deduction for savings have been rationalized to provide only for long-term savings.

"Thus, the limit of Rs. 3 lakh has been split into 3 parts:

(i) Rs. one lakh for long term savings.

(ii) Rs. fifty thousand for education, life insurance and health expenses.

(iii) Rs. one lakh fifty thousand for interest on loan for acquiring self-occupied property.

It is therefore, not feasible to provide any further deduction as this would erode the tax base".

7.17 Clause 70 of the Code deals with the deduction *for* life insurance. The Clause reads as under:

70. (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum paid or deposited to effect or keep in force an insurance on the life of persons specified in sub-section (3).
(2) The insurance referred to in sub-section (1) shall be an insurance where the premium payable for any of the years during the term of the policy shall not exceed five per cent of the capital sum assured.

7.18 The relevant provision in the Income Tax Act, 1961 is as follows:

80C(3) The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy other than a contract for a deferred annuity as is not in excess of twenty per cent of the actual capital sum assured.

Explanation.—In calculating any such actual capital sum assured, no account shall be taken—

(i) of the value of any premiums agreed to be returned, or

(ii) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

7.19 The FICCI has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

Under the existing law, exemption has been granted to receipts from life insurance policies of which the premium to sum assured ratio is 1:5. In the bill, this ratio is proposed to be increased to 1:20. The IRDA already mandates a minimum premium to sum assured ratio, In fact it has recently increased the ratio for e.g. in case of regular premium ULIPs it has increased the ratio from 1:5 to 1:10 in cases where the policyholders are is up to 45 years, it is suggested that the condition for exemption be eliminated and all products meeting the IRDA's guidelines be allowed the tax benefit. At best, the ratio may be prescribed at 1:10 in line with the IRDA's policy stance in the regard.

This mandated ratio is totally unfair and will probably discourage people from taking such insurance policies. At the same time, there is no social security scheme in the country. Therefore, it is suggested that the existing position under the Income-tax Act should be continued in this regard. In any case, the new provision should not be made applicable to insurance policies taken up to 31.03.2012.

7.20 The Ministry's reply to the above suggestions is as follows:

Since only pure and long-term insurance policies are to be incentivised, the prescribed ratio is reasonable and does not need to be altered. This will discourage sale of investment products as insurance products using tax arbitrage.

Transitional provisions will be considered.

7.21 The Clause 71 of the Code deals with deduction for health insurance. The Clause reads as under:

71(1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum paid during the financial year to effect, or to keep in force, an insurance on the health of persons specified in sub-section (2) and in addition, in the case of an individual, any contribution made to the Central Government Health Scheme.

(2) The person referred to in sub-section (1) shall be—

(*a*) the individual, spouse, or any dependant child or parents of such individual; and

(*b*) in case of a Hindu undivided family, any member of such family.

(3) The insurance under this section refers to a health insurance scheme framed by any insurer which is approved by the Insurance Regulatory and Development Authority.

7.22 The existing provision in the Income Tax Act relating to deduction in respect of health insurance premia reads as under:

80D. (2) Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:—

(a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme as does not exceed in the aggregate fifteen thousand rupees; and

(b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee as does not exceed in the aggregate fifteen thousand rupees.

Explanation.—For the purposes of clause (a), "family" means the spouse and dependent children of the assessee.

7.23 The ICAI has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

(i) Sub-section 2 of section 71 may be reworded as:

"The person referred to in sub-section (1) shall be ANY OR ALL OF THE FOLLOWING-

(a) IN CASE OF AN INDIVIDUAL,
~~the~~ individual;
i) spouse; ~~or~~
~~ii)~~ any dependent child; ~~or~~
iii) parents of such individual; and

(b) In case of a Hindu undivided family, any member of such family.

The language of the existing sub section (2) is not clear and may lead to confusion as to whether the deduction is allowed in respect of insurance taken for either of the dependent child or parents or for both of them. Changes are suggested to bring out the legislative intent with greater clarity.

(ii) The limit should be increased from Rs. 15,000/- to Rs. 35,000/-

7.24 The Ministry's reply to the above suggestion is as follows:

(i) There is no ambiguity in the statute.

(ii) There is no such limit under clause 71 of DTC 2010.

The combined limit for insurance and children education is Rs.50,000 under clause 73.

7.25 The Clause 72 of the Code deals with the deductions for education of children. The clause reads as under:

72(1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum paid during the financial year, if the sum is paid—
(*a*) as tuition fee to any school, college, university or other educational institution situated within India; and
(*b*) for the purpose of full time education of any two children of such individual or Hindu undivided family.

(2) In this section—

(*a*) tuition fee shall not include any payment towards any development fee or donation or any payment of similar nature;
(*b*) full time education shall include education in play school or pre-school.

7.26 The relevant provision in the Income Tax Act, 1961 is as follows:

80C(2) The sums referred to in sub-section (1) shall be any sums paid or deposited in the previous year by the assessee—

(xvii) as tuition fees (excluding any payment towards any development fees or donation or payment of similar nature), whether at the time of admission or thereafter,—

(a) to any university, college, school or other educational institution situated within India;

(b) for the purpose of full-time education of any of the persons specified in sub-section (4);

(4) The persons referred to in sub-section (2) shall be the following, namely:—

(a) for the purposes of clauses (i), (v), (x) and (xi) of that sub-section,—

(i) in the case of an individual, the individual, the wife or husband and any child of such individual, and

(ii) in the case of a Hindu undivided family, any member thereof;

(b) for the purposes of clause (ii) of that sub-section, in the case of an individual, the individual, the wife or husband and any child of such individual;

(c) for the purposes of clause (xvii) of that sub-section, in the case of an individual, any two children of such individual.

7.27 The ICAI has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

Clause 72(1) may be redrafted as follows:
"a person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum actually paid during the financial year, if the sum is –

(a) paid as tuition fee to any university, college, school or other educational institution situated within India; and

(b) for the purpose of ~~full-time~~ education of SELF OR SPOUSE OR any two children of such individual or ANY MEMBER OF Hindu undivided family."

The heading of section 72 may be re-worded as "Deduction in respect of ~~Children's~~ education"

Such deduction should not be restricted to sum incurred for children alone but may be extended to sum paid for education of self and spouse.
Further, the purpose of the deduction should also not be restricted to full-time education. Part-time courses and distance education should also be brought within the ambit of this section.

Also, since a Hindu undivided family cannot have any children, reference may be given to a member of Hindu undivided family.

7.28 The Ministry's reply to the above suggestion is as follows:

Not acceptable as the intention is to incentivise the expenditure incurred on the education of children.

An HUF is eligible for this deduction and it is obvious that the deduction would be claimed on tuition fee paid for the education of any two children of any member of the said HUF.

The draft of 72 (1)(b) is proposed to be amended as under:

"(*b*) for the purpose of full time education of any two children of such individual or of any member of the Hindu undivided family."

7.29 Clause 73 of the Code deals with limit on deductions under sections 70, 71 and 72. The Clause reads as under:

73 The aggregate amount of deductions under sections 70, 71 and 72 shall not exceed fifty thousand rupees.

7.30 The relevant provision in the Income Tax Act, 1961 relating to deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, is as follows:

80C(1) In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted, in accordance with and subject to the provisions of this section, the whole of the amount paid or deposited in the previous year, being the aggregate of the sums referred to in subsection (2), as does not exceed one lakh rupees.

Deduction in respect of health insurance premia.

80D. (2) Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:—
(a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme as does not exceed in the aggregate fifteen thousand rupees; and

(b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee as does not exceed in the aggregate fifteen thousand rupees.

7.31 The ICAI has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

A. It is suggested that a combined limit of Rs. 1.80 lacs be provided for all the permissible investments / expenses, with possible sub-limit for mediclaim to make the deductions at par with the existing provisions.

B. Further, the repayment of housing loan be considered as eligible for granting the deduction. Since the intention is to restore the existing deductions granted, it would be most appropriate to restore the deductions in the same format in which it is presently granted.

7.32 The Ministry's reply to the above suggestions is as follows:

A. The combined limit of clauses 69 and 73 is Rs. 1.5 lakhs already. There is no justification for this request at this juncture.

B. Since the intention under DTC is to incentivise only long-term savings, life and health insurance and expenditure on children's education, it is not feasible to restore all the deductions available under the current law.

7.33 **The Committee find that the Ministry's proposals with regard to incentivising only long-term savings and social security expenditure like life and health insurance or expenditure on Children's education are broadly in conformity with the Committee's suggestions made in their recent Reports relating to the Ministry's Demands for Grants. The Committee, however, consider the proposed exemption limit of Rs. one lakh under clause 69 as inadequate considering our social security needs. The Committee would, therefore, recommend the raising of this limit to Rs. one lakh fifty thousand with a view to promote long term savings. While broadly endorsing the proposals made in Clauses 70 to 73 with regard to allowable deductions for expenditure incurred on life insurance, health insurance and fees paid for education of children, all of which together have been subject to a combined limit of fifty thousand rupees per annum, the Committee would recommend that this limit may be increased to one lakh rupees so that all the above expenses are covered in a reasonable manner. Further, additional deduction**

on account of health insurance premia paid for dependent parents to the tune of Rs. twenty thousand may be separately allowed with a view to promoting social security for senior citizens. This may also include dependent grand-parents. The Committee further believe that since higher education, particularly professional education has become extraordinarily expensive for ordinary citizens of the country, similar additional deduction to the tune of Rs. fifty thousand may be permitted specially for this purpose over and above the deductions suggested above. Such focused deductions on personal incomes would help provide requisite relief to the middle-classes, while encouraging long term household savings for the benefit of the economy at large.

7.34 Clause 74 of the Code deals with deduction of interest on loan taken for house property. The Clause reads as under:

> 74(1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction, in respect of any amount paid or payable by way of interest on loan taken for the purpose of acquisition, construction, repair or renovation of a house property in the financial year in which such property is acquired or constructed or any subsequent financial year, subject to the conditions specified in sub-section (2).
>
> (2) The deduction referred to in sub-section (1) shall be allowed if—
>
> (*a*) the house property is owned by the person and not let out during the financial year;
>
> (*b*) the acquisition or construction of the house property is completed within a period of three years from the end of the financial year in which the loan was taken; and
>
> (*c*) the person obtains a certificate from the financial institution to whom the interest is paid or payable on the loan.
>
> (3) The interest referred to in sub-section (1) which pertains to the period prior to the financial year in which the house property has been acquired or constructed shall be allowed as deduction in five equal instalments beginning from such financial year.
>
> (4) The interest referred to in sub-section (3) shall be reduced by any part thereof which has been allowed as deduction under any other provision of this Code.
>
> (5) The amount of deduction under this section shall not exceed one lakh and fifty thousand rupees.

7.35 The relevant provision in the Income Tax Act, 1961 is as follows:

24. Income chargeable under the head “Income from house property” shall be computed after making the following deductions, namely:—

(a) a sum equal to thirty per cent of the annual value;

(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided that in respect of property referred to in sub-section (2) of section 23, the amount of deduction shall not exceed thirty thousand rupees :

Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed, the amount of deduction under this clause shall not exceed one lakh fifty thousand rupees.

Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years:

Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation.—For the purposes of this proviso, the expression “new loan” means the whole or any part of a loan taken by the assessee subsequent to the capital borrowed, for the purpose of repayment of such capital.

7.36 The Bombay Chamber of Commerce has suggested the following changes in the proposed clause in their memorandum submitted to the Committee:

The real estate prices have risen drastically necessitating huge borrowings. As a result, corresponding interest outflow has also increased significantly.

Interest paid in the case of any house property (self occupied or otherwise) should be allowed as a deduction without any monetary limit.

Alternatively, limit for interest deduction should be substantially increased.

7.37 The Ministry's reply to the above suggestions is as follows:

There is no limit in case of interest paid on a property that has been let out.

As far as self-occupied house is concerned, the present limit is reasonable.

7.38 The ICAI has suggested the following changes in the proposed clause in their memorandum submitted to the Committee:

In respect of deduction related to interest on loan taken for house property, It is suggested that:-

a) to avoid undue hardship caused to a person using his house property for the purpose of business, it is suggested that clause (a) of section 74(2) may be re-worded as under:-

"the house property is owned by the person and ~~not let out~~ IS SELF OCCUPIED during the financial year;"

The words used in section 74(2)(a) are "not let out during the financial year" which implies that the person who has not let out the property and has used the same for his own business would also be covered under this section. This would restrict the deduction in respect of interest on housing loan to Rs.1,50,000 which may not be the intention of the law makers. The provisions of the current law may be restored and deduction of actual interest paid be allowed in the said case.

b) to bring the language of section 74(2)(b) in conformity with section 74(1), section 74(2)(b) should be re-worded as under:-

"the acquisition, ~~or~~ construction, REPAIR OR RENOVATION of the house property is completed within a period of three years from the end of the financial year in which the loan was taken"

Section 74(1) provides that the deduction in respect interest on loan taken on acquisition, construction, repair or renovation of a house property shall be allowed.

However, section 74(2)(b) provides the time period only for completion of acquisition or construction and not repair or renovation of such house property. Such anomaly may be removed.

c) The provisions of current law may be restored and the deduction be allowed in respect of interest on loan taken from any person other than relative.

However, if the same is not agreeable, the deduction should be provided at least in respect of interest on housing loan taken from an employer even if such employer is not a financial institution.

Clause (c) of section 74(1) restricts the person to take deduction in respect of loan taken from financial institutions only. However, in actual practice loan is being provided by other persons also including employers. Thus, the provisions of the current law may be restored.

7.39 The Ministry's reply to the above suggestions is as follows:

(a) A house property used for business would not be chargeable to tax under the head "Income from house property" but would be dealt with under the head "Income from business" wherein there is no limit on deduction of interest paid or payable`.

b) Inclusion of the term 'repair' and 'renovation' in the time limit of 3 years will be considered

c) Inclusion of employer will be considered.

7.40 **The Committee would expect that necessary modifications will be made in the Code, as agreed to by the Ministry providing for prescribed exemption in respect of interest on loan taken for self-occupied house property, so as to include in its ambit loan taken from all types of employers apart from financial institutions. Clause 74(2)(b) should be modified so as to be in conformity with the governing clause 74(l) in order to include 'repair and renovation' within the time period of three years from the receipt of loan, during which the process has to be completed.**

7.41 Clause 75 of the Code deals with Deduction of interest on loan taken for higher education. The Clause reads as under:

75(1) A person, being an individual, shall be allowed a deduction in respect of any amount paid by him in the financial year by way of interest on loan taken by him from any financial institution for the purpose of—

(*a*) pursuing his higher education; or

(*b*) higher education of his relatives.

(2) The deduction specified in sub-section (1) shall be allowed in the initial financial year and seven financial years immediately succeeding the initial financial year or until the interest referred to in sub-section (1) is paid by the person in full, whichever is earlier.

(3) In this section—

(*a*) "financial institution" means a banking company or any other financial institution which the Central Government may, by notification, specify in this behalf;

(*b*) "higher education" means any course of study pursued after passing the senior secondary examination, or its equivalent, conducted by any board, or university, recognised by the Central or State Government or any authority authorised by the Government so to do;

(*c*) "initial financial year" means the financial year in which the person begins to pay the interest on the loan;

(*d*) "relative" means—

(*i*) spouse of the individual;

(*ii*) child of the individual; or

(*iii*) a student for whom the individual is the legal guardian.

7.42 The existing provision in the Income Tax Act, 1961 is as follows:

80E. (1) In computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, any amount paid by him in the previous year, out of his income chargeable to tax, by way of interest on loan taken by him from any financial institution or any approved charitable institution for the purpose of pursuing his higher education or for the purpose of higher education of his relative.

(2) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the initial assessment year and seven assessment years immediately succeeding the initial assessment year or until the interest referred to in sub-section (1) is paid by the assessee in full, whichever is earlier.

(3) For the purposes of this section,—

(a) "approved charitable institution" means an institution specified in, or, as the case may be, an institution established for charitable purposes and approved by the prescribed authority under clause (23C) of section 10 or an institution referred to in clause (a) of sub-section (2) of section 80G;

(b) “financial institution” means a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or any other financial institution which the Central Government may, by notification in the Official Gazette, specify in this behalf;

(c) “higher education” means any course of study pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorised by the Central Government or State Government or local authority to do so;

(d) “initial assessment year” means the assessment year relevant to the previous year, in which the assessee starts paying the interest on the loan;

(e) “relative”, in relation to an individual, means the spouse and children of that individual or the student for whom the individual is the legal guardian.

7.43 The ICAI has suggested the following changes in the proposed clause in their memorandum submitted to the Committee:

It is suggested that the said qualifying condition of loan borrowed from the financial institution alone may be removed for paving way for several self - help groups created or NGOs set up for financing the education of the children.

There is an increasing trend of setting up NGOs and self help community based groups for funding the higher education of the children. These trusts provide for concessional terms for borrowing and interest. These trusts provide a very good alternative to the persons seeking to be educated. There is no reason for restricting the benefit of deduction if the interest is paid to such organizations. The condition of asking these small set ups to seek approval is very cumbersome.

7.44 The Ministry’s reply to the above suggestions is as follows:

Not acceptable as borrowings from charitable institutions should be made by the charity at low rates of interest or should be for people of limited means which implies they would be below the taxable limit.

7.45 **The Committee desire that the qualifying condition of loan taken for higher education from a financial institution alone as specified in Clause 75(1) may be relaxed so as to facilitate borrowing from other institutions or self-help community groups as well, particularly in the present-day context,**

when higher education including professional studies has become less affordable.

7.46 Clause 78 of the Code deals with deduction for medical treatment and maintenance of a dependant person with disability. The Clause reads as under:

> **78.** (1) A person, being resident individual or Hindu undivided family, shall be allowed a deduction in respect of—
>
> (*a*) any expenditure incurred during the financial year for the medical treatment, nursing or training and rehabilitation of a dependant person with disability; or
>
> (*b*) any amount paid or deposited during the financial year under a scheme framed by any insurer and approved by the Board in this behalf, for the maintenance of a dependant person with disability.
>
> (2) The amount of deduction under sub-section (1) shall not exceed—
>
> (*a*) one lakh rupees, if the dependant is a person with severe disability; or
>
> (*b*) fifty thousand rupees, if the dependant is a person with disability.
> (3) The deduction in respect of the amount referred to in clause (*b*) of sub-section (1) shall be allowed, if the scheme referred to therein provides for payment of annuity or lump sum amount for the benefit of a dependant person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made.
>
> (4) The deduction under this section shall be allowed if the person, claiming a deduction under this section, obtains a certificate from a medical authority in such form and manner as may be prescribed and the certificate remains valid during the relevant financial year or part thereof.
>
> (5) The amount received by the person under the scheme referred to in clause (*b*) of sub-section (1), upon the dependant person with disability, predeceasing him, shall be deemed to be the income of the person for the financial year in which the amount is received by him.
>
> (6) In this section, “dependant” means spouse, any child or parents of the individual, or any member of the Hindu undivided family, if—
>
> (*i*) he is mainly dependant on such individual, or Hindu undivided family, for his support and maintenance; and
>
> (*ii*) his income in the financial year is less than twenty-four thousand rupees.

7.47 The relevant provision in the Income Tax Act, 1961 is as follows:

80DD. (1) Where an assessee, being an individual or a Hindu undivided family, who is a resident in India, has, during the previous year,—

(a) incurred any expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or

(b) paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the specified company subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of a dependant, being a person with disability, the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of a sum of fifty thousand rupees from his gross total income in respect of the previous year:

Provided that where such dependant is a person with severe disability, the provisions of this sub-section shall have effect as if for the words "fifty thousand rupees", the words "one hundred thousand rupees" had been substituted.

(2) The deduction under clause (b) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely:—

(a) the scheme referred to in clause (b) of sub-section (1) provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made;

(b) the assessee nominates either the dependant, being a person with disability, or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability.

(3) If the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2), an amount equal to the amount paid or deposited under clause (b) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

(4) The assessee, claiming a deduction under this section, shall furnish a copy of the certificate issued by the medical authority in the prescribed form and manner, along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed:

Provided that where the condition of disability requires reassessment of its extent after a period stipulated in the aforesaid certificate, no deduction

under this section shall be allowed for any assessment year relating to any previous year beginning after the expiry of the previous year during which the aforesaid certificate of disability had expired, unless a new certificate is obtained from the medical authority in the form and manner, as may be prescribed, and a copy thereof is furnished along with the return of income.

Explanation.—For the purposes of this section,—
(a) "Administrator" means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002)73;

(b) "dependant" means—

(i) in the case of an individual, the spouse, children, parents, brothers and sisters of the individual or any of them;

(ii) in the case of a Hindu undivided family, a member of the Hindu undivided family, dependant wholly or mainly on such individual or Hindu undivided family for his support and maintenance, and who has not claimed any deduction under section 80U in computing his total income for the assessment year relating to the previous year;

7.48 The ICAI has suggested the following changes in the proposed clause in their memorandum submitted to the Committee:

(i) Deduction of Rs.50,000 / Rs.1 lakh should be allowed for maintenance of a dependent disabled, irrespective of the actual expenditure.

(ii) In order to avoid unnecessary litigation, the heading of the section may be re-worded as follows:

"Deduction in respect of maintenance INCLUDING MEDICAL TREATMENT of a disabled dependent"

Maintenance of disabled dependent is not an easy task. There may be cases where there are no day to day medical expenditure but still a disabled person is being maintained on moral grounds. Disallowing the deduction in respect of such cases is not justified. It may be noted that section 80DD of the Income-tax Act, 1961 provides for a flat deduction irrespective of the amount of expenditure incurred.

7.49 The Ministry's reply to the above suggestion is as follows:

(i) provisions of the DTC, 2010 will be reviewed to align with the current provision in the Income-tax Act.
(ii) There is no ambiguity in the section heading. Further, the provisions of clause 78 of the DTC are similar to section 80DD of the IT Act, 1961.

7.50 The ICAI has further suggested the following on this Clause:

(i) Section 80DD of the present Act, includes brother and sister of an individual in the definition of "dependent". To maintain status quo and to avoid undue hardship that may be caused in genuine cases the words brother and sister may be inserted.

(ii) Having regard to the current inflationary conditions in India, the limit of annual income prescribed, namely, rupees twenty four thousand per annum [under sub-clause (ii)] to fall within the meaning of dependent seems to be very less. Thus the limit under sub-clause (ii) to fall within the meaning of dependent may be suitably raised to at least rupees sixty thousand**.**

7.51 The Ministry's reply to the above suggestion is as follows:

(i) and (ii) Will be considered. It is proposed to provide for a uniform definition of 'dependant' for all the provisions relating to incentives.

7.52 **The Committee recommend that the proposed amount of deduction in respect of expenses incurred for medical treatment and maintenance of a dependant person with disability should be allowed irrespective of the actual expenditure incurred, keeping in view the fact that maintenance of disabled dependents is a challenging task. Similarly, in pursuance of such a compassionate approach to tax policy and having regard to prevailing inflationary conditions, the Committee would also recommend that the prescribed annual income, namely twenty four thousand rupees may be raised. In the same vein, the scope of definition of 'dependent' may also be widened to include blood relation like brother and sister in alignment with the present Act.**

7.53 Clause 79 of the Code deals with Deduction of contribution or donations to certain funds or non-profit organisations. The Clause reads as under:

79 (1) A person shall be allowed a deduction of—

(*a*) one hundred and seventy-five per cent of the amount of money paid by him in the financial year as contribution or donation to any person specified in Part I of the Sixteenth Schedule;

(*b*) one hundred and twenty-five per cent of the amount of money paid by him in the financial year as contribution or donation to any person specified in Part II of the Sixteenth Schedule;

(*c*) one hundred per cent of the amount of money paid by him in the financial year as donation to any person specified in Part III of the Sixteenth Schedule;

(*d*) fifty per cent of the aggregate of the amount of money actually paid by him in the financial year as donation to any person specified in Part IV of the Sixteenth Schedule.

(2) The aggregate of the amount of money referred to in clause (*d*) of sub-section (1) shall be limited to ten per cent of the gross total income from ordinary sources, if the aggregate exceeds ten per cent of the gross total income from ordinary sources.

(3) The deduction under this section shall not be allowed in respect of any amount of money paid to any person referred to in sub-section (1), if—

(*a*) the amount is laid out or expended during the financial year for any religious activity; or

(*b*) any activity of the donee is intended for, or actually benefits, any particular caste, not being the Scheduled Castes or the Scheduled Tribes.

7.54 The relevant provision in the Income Tax Act, 1961 is as follows:

Deduction in respect of donations to certain funds, charitable institutions, etc.

80G. (5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfills the following conditions, namely :—

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA)or clause (23C) of section 10 :

Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—

(a) the institution or fund maintains separate books of account in respect of such business;
(b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in

respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;

(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;
(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or is an institution financed wholly or in part by the Government or a local authority;

7.55 The ICAI has suggested the following changes in the proposed clause in their memorandum submitted to the Committee:

It is suggested that section 79(3) should be deleted and should be inserted as a qualifying condition for registration under section 98.
If the deduction is allowed only if donation or contribution is made to entities specified in Sixteenth Schedule, then disallowing such deduction to the person on the grounds that the amount paid by him is used by the entity for specific purposes is unfair and unjust. Restriction for non-applicability of the amount received as donation or contribution for specific purposes should be imposed on the donee and not the donor as post-facto monitoring is not possible.

7.56 The Ministry's reply to the above suggestions is as follows:

"Rationalization of clause 79 and Sixteenth Schedule will be considered".

7.57 **The Committee would recommend that Clause 79 together with Sixteenth schedule may be rationalized so as to make the restrictions on donations to certain funds/NPOs as proposed in clause 79(3) more donee-centric. Further, the Committee recommend that item (b) of Part I and item (b) of Part II of Sixteenth Schedule which specifies University, College or other institutes eligible for one hundred and seventy five percent deduction**

and one hundred and twenty five percent deductions respectively should be brought under Part III of the Sixteenth Schedule.

7.58 Clause 80 of the Code deals with deductions for rent paid. The Clause reads as under:

> 80. (1) A person, being an individual and not in receipt of any house rent allowance, shall be allowed a deduction of any expenditure incurred by him in excess of ten per cent of his gross total income from ordinary sources towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for his own residence.
>
> (2) The deduction referred to in sub-section (1) shall be allowed up to a maximum of two thousand rupees per month and shall be subject to such other conditions as may be prescribed having regard to the area or place in which the accommodation is situated.
>
> (3) The provisions of this section shall not apply to a person if any residential accommodation is owned by him or by his spouse or minor child in the place where he ordinarily resides or performs duties of his office or employment or carries on his business.

7.59 The relevant provision in the Income Tax Act, 1961 is as follows:

> Deductions in respect of rents paid.
>
> 80GG. In computing the total income of an assessee, not being an assessee having any income falling within clause (13A) of section 10, there shall be deducted any expenditure incurred by him in excess of ten per cent of his total income towards payment of rent (by whatever name called) in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence, to the extent to which such excess expenditure does not exceed two thousand rupees per month or twenty-five per cent of his total income for the year, whichever is less, and subject to such other conditions or limitations as may be prescribed, having regard to the area or place in which such accommodation is situated and other relevant considerations :
>
> Provided that nothing in this section shall apply to an assessee in any case where Any residential accommodation is—
>
> (i) owned by the assessee or by his spouse or minor child or, where such assessee is a member of a Hindu undivided family, by such family at the place where he ordinarily resides or performs duties of his office or employment or carries on his business or profession; or
>
> (ii) owned by the assessee at any other place, being accommodation in the occupation of the assessee, the value of which is to be determined

[under clause (a) of sub-section (2) or, as the case may be, clause (a) of sub-section (4) of section 23].

Explanation.—In this section, the expressions "ten per cent of his total income" and "twenty-five per cent of his total income" shall mean ten per cent or twenty five per cent, as the case may be, of the assessee's total income before allowing deduction for any expenditure under this section.

7.60 The Bombay Chamber of Commerce has suggested the following changes in the proposed clause in their memorandum submitted to the Committee:

The monetary limit is too low considering the rise in the cost of housing rent. The limit be increased to at least Rs. 25,000/- per month.

7.61 The Ministry's reply to the above suggestions is as follows:

Not acceptable as the existing limit is reasonable.

7.62 **Keeping in view the rising cost of renting out accommodation for a common man, the proposed monetary limit of two thousand rupees per month for deduction in respect of rents paid, which is the same as in the present Act, may be enhanced to Rs. 5,000/- per month. The limit may be periodically revised to keep it in sync with the prevailing market conditions.**

7.63 Clause 85 of the code provides that (*1*) A person, being a primary co-operative society, shall be allowed a deduction to the extent of profits derived from the business of providing banking, or credit, facility to its members.

(*2*) In this section "primary co-operative society" means—

(*a*) a "primary agricultural credit society" within the meaning of Part V of the Banking Regulation Act, 1949; or

(*b*) a "primary co-operative agricultural and rural development bank", which-

(*i*) has its area of operation confined to a taluk; and

(ii) is mainly engaged in providing long-term credit for agricultural and rural development activities.

7.64 Clause 86 of the Code provides that (*1*) A person, being a primary co-operative society, shall be allowed a deduction in respect of the aggregate of the amounts referred to in sub-section (*2*).

(*2*) The amount referred to in sub-section (*1*) shall be—

(*a*) the amount of profits derived from agriculture or agriculture-related activities; and

(*b*) the amount of income derived from any other activity, to the extent it does not exceed one lakh rupees.

(*3*) In this section,—

(*a*) "agriculture-related activities" means the following activities, namely:—

(*i*) purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members;

(*ii*) the collective disposal of—

(*A*) agricultural produce grown by its members; or

(*B*) dairy or poultry produce produced by its members; and

(iii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of material and equipment in connection therewith for the purpose of supplying them to its members;

(*b*) "primary co-operative society" means a co-operative society whose rules and bye-laws restrict the voting rights to individuals engaged in agriculture or agriculture- related activities.

7.65 **Provision as per existing Act**

Deduction in respect of income of co-operative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

[(iii) the marketing of agricultural produce grown by its members, or]

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, [or]

[(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,]

the whole of the amount of profits and gains of business attributable to any one or more of such activities :

[**Provided** that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—

(1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government;]

[(b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to—

(i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

(ii) the Government or a local authority; or

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

the whole of the amount of profits and gains of such business;]

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as [does not exceed,—

(i) where such co-operative society is a consumers' co-operative society, [one hundred] thousand rupees; and

(ii) in any other case, [fifty] thousand rupees.

Explanation.—In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;]

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities [***] or any income from house property chargeable under section 22.

Explanation.—For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under [***] [section 80HH] [or section 80HHA] [or section 80HHB] [or section 80HHC] [or section 80HHD] [or section 80-I] [or section 80-IA] or section 80J [***] [***], the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under [***] [section 80HH,] [section 80HHA,] [section 80HHB,] [section 80HHC,] [section 80HHD,] [section 80-I,] [section 80-IA,] [[section 80J and section 80JJ]].]

[(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]

7.66 The Committee has received numerous suggestions from different cooperative societies requesting that provisions of Section 80P of the existing Act should be restored in the Code because not only it would safeguard the interests

of cooperative societies but it would also serve the purposes of its members; and rural masses for best managed financial services to the masses in general.

7.67 The Ministry has replied that the co-operative societies are formed with the purpose to promote cooperation and thrift amongst its members. Accordingly, Clause 85 of the DTC Bill, 2010 already provides for deduction to a primary co-operative society, to the extent of profits derived from the business of providing banking, or credit, facility to its members.

Similarly, clause 86 of the Bill provides for the following deductions to a primary cooperative society :

(a) the amount of profits derived from agriculture or agriculture-related activities; and

(b) the amount of income derived from any other activity, to the extent it does not exceed one lakh rupees.

Further, Schedule VI enables the Govt. to notify certain income of the cooperative societies to be exempt from taxation. The scope of clauses 85 and 86 and Schedule VI of the DTC Bill, 2010 is in accordance with the current provisions of the Act.

7.68 Keeping in view the large number of representations received by the Committee from different cooperative societies for restoration of tax exemption as provided under the existing Section 80P of the Income Tax Act, the Committee would recommend that the Ministry may consider the same for modification in Clauses 85 and 86 of the Code. Further, the definition of a "primary co-operative agricultural and rural development bank" should not confine its scope to a taluk alone and its objects may also be expanded to cover long-term credit for all allied activities apart from "agricultural and rural development activities".

CHAPTER – VIII- MAINTENANCE OF ACCOUNTS AND OTHER RELATED MATTERS

8.1 The provisions under the clauses of the Chapter 'Maintenance of Accountant and other related matters provide for the system and procedure of maintenance of accounts, the persons obligated to maintain specified books of accounts and other documents, audit of accounts and the method of accounting.

Proposed clauses in the DTC Bill, 2010

Clause 87 – Maintenance of accounts

8.2 Clause 87 reads as under :

"**87**. (*1*) Every person shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Code.

(*2*) Every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof, as may be prescribed.

(*3*) The person referred to in sub-section (*1*) shall be the following, namely:—

(*a*) any person carrying on legal, medical, engineering, architectural profession or profession of accountancy, technical consultancy, interior decoration or any other profession as is notified by the Board;

(*b*) any other person carrying on business, if—

(*i*) his income from the business exceeds two lakh rupees;

(*ii*) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or

(*iii*) the business is newly set-up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year".

8.3 **Existing provision in the Income Tax Act, 1961**

"**44AA.** (1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the [Assessing] Officer to compute his total income in accordance with the provisions of this Act.

(2) Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,—

(i) if his income from business or profession exceeds [one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds [ten lakh] rupees in any one of the three years immediately preceding the previous year; or

(ii) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed [one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed [ten lakh] rupees, [during such previous year; or

(iii) where the profits and gains from the business are deemed to be the profits and gains of the assessee under [section 44AE] [or section 44BB or section 44BBB], as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such [previous year; or]]

[(iv) where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax during such previous year,]

keep and maintain such books of account and other documents as may enable the [Assessing] Officer to compute his total income in accordance with the provisions of this Act".

8.4 Suggestions on this clause as received through written memoranda from the following institutions are given as under :

"(i) Under section 87 of the DTC, for the purpose of requirement of maintaining books of accounts, the limit of business income of Rs. 2 lakhs and / or turnover limit of Rs. 10 lakhs is provided. The limit of business income of Rs. 2 lakhs / turnover of Rs. 10 lakhs is very low in the present context. Further, a similar reasonable limit should be also prescribed for person carrying on legal, medical, engineering, architectural profession or profession of accountancy, technical consultancy, interior decoration or any other profession as is notified by the Board, specifically during the start up phase. Apart from this, specific exclusion from the requirement of

maintenance of books is required to be provided where income is computed on presumptive basis. **(Bombay Chartered Accountants' Society).**

(ii) Sub-clause [b] of this section provides that any person having income more than Two Lakhs in a year and turnover of Ten Lakhs in any one of the preceding three years will require to keep Accounts Books. Failure to do so, as per Section 232 attract Minimum Penalty of 50,000 and Maximum Rs. Two Lakhs.

It is suggested that income limit be enhanced upto 5 Lakhs and turnover limit upto 25 lakhs so as to provide essential relief to micro enterprises. Such an enhancement will be a prudent step considering Rs. One crore Turnover limit for Presumptive Taxation where no record is mandatory. **[Chamber of Small Industry Associations (COSIA)].**

8.5 The Ministry did not submit any comments on the above said suggestions.

Clause 87 (4)

8.6 Clause 87(4) reads as under :

87(*4*) The books of account referred to in sub-section (*1*) shall be the following, namely:—

(*a*) a cash book;

(*b*) a journal, if the accounts are maintained according to the mercantile system of accounting;

(*c*) a ledger;

(*d*) register of daily inventory of business trading asset;

(*e*) copies of serially numbered bills issued by the person, if the value of the bill exceeds two hundred rupees;

(*f*) copies or counterfoils of serially numbered receipts issued by the person, if the value of the bill exceeds two hundred rupees;

(*g*) original bills or receipts issued to the person in respect of expenditure incurred by him, if the amount of the expenditure exceeds two hundred rupees;

(*h*) payment vouchers prepared and signed by the person in respect of expenditure not exceeding two hundred rupees, if there are no bills or receipts for such expenditure.

(*5*) The bills or receipts issued to any person shall contain the name, address and such other particulars as may be prescribed.

8.7 **Existing provision in the Income Tax Act, 1961**

44AA(3) The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe, by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.

8.8 On this clause, Bombay Chartered Accountants' Society in their written memorandum suggested as follows :

> "The bills or receipts issued to any person are required to contain the name, address and such other particulars as may be prescribed. It is practically impossible to maintain the required details such as name, address, etc. in certain types of business e.g. retailers, restaurants or for that matter, even in a manufacturing or other trading organization. Further, the threshold of Rs. 200 is too low and should be a prescribed by the Board having regard to prevailing inflation standard and related circumstances".

8.9 The Ministry did not submit any comments on the above said suggestions.

8.10 **The Committee find merit in the need expressed by the Chambers of Commerce in particular for raising the limit of business income / turnover of Rs. 2 lakh and Rs. 10 lakh respectively proposed for the purpose of compulsorily maintaining books of accounts [under Clause 87(3)(ii) and (iii)] to Rs. 5 lakh and Rs. 25 lakh respectively. This would be all the more essential in the start up phase of professions such as engineering, technical consultancy, medicine, law, etc. Further, the Committee also find it appropriate to raise the threshold limit of Rs. 200 [under clause 87(4)] for maintaining bills or receipts containing details of the payees names etc. to Rs. 1,000. The Committee desire that the provisions pertaining to maintenance of accounts etc. are suitably modified to address the concerns expressed.**

The Committee would recommend that the Ministry may prescribe "percentage completion method" for companies involved in the business of construction etc. as a better alternative to "project completion method".

CHAPTER – IX - SPECIAL PROVISIONS RELATING TO THE COMPUTATION OF TOTAL INCOME OF NON-PROFIT ORGANISATIONS

9.1 A fresh approach for taxation of Non-Profit Organizations (NPOs) has been envisaged in the Code. Under the Code, NPOs have been allowed to carry forward 15% of total income or10% of gross receipts, whichever is higher to be spent within 3 years from the end of the relevant financial year. The code specifies the modes of investment till such amount is spent by the NPO. The First Schedule provides that the income of NPO in excess of Rs. 1,00,000 would be subject to tax at the rate of 15%. NPO's notified in Seventh Schedule are exempt from tax. Income from sale of investments by NPOs are treated at par with other income of NPOs. Such gains cannot be re-invested in another eligible asset by the NPO. The Code has also prescribed the mode of accounting to be followed by NPOs. There is no grandfathering provisions in respect of NPOs which were set up prior to 1961 and are in operations even today. The Code is silent about the trust/institution partly religious and partly charitable

9.2 The existing scheme of taxation of non-profit organizations (NPOs) is governed by Section 11-13 of the Income tax Act, 1961. The existing scheme applies to charitable as well as religious organizations. It also applies to property held in trusts even partly for charitable/religious purposes if, the trust has been created before the commencement of Income Tax Act, 1961. Under existing provisions of the Income Tax Act, NPOs are allowed to accumulate 15% of their income unconditionally. Further NPOs are allowed to accumulate income in excess of the permitted 15% accumulation for a period of 5 years to be utilized for specific purposes. Capital gain on transfer of capital assets is effectively not taxable if re-investment is made in any other capital asset. As per section 13(1)(b) the benefit of exemption is not available to the Charitable organisaiton established for a particular religious community or caste, specific provisions have been made to continue the benefits to such trust/institutions established prior to the commencement of the Income Tax Act.

Sl. No.	**DTC, 2010**	**IT Act, 1961**
1.	Clause 93(1)(a) to (h) deals with the gross receipts of a NPO. The gross receipts shall be the aggregate of the amounts enumerated under Clause 93 (1) (a) to (h). As per Clause 93 (d), capital gains	Section 11(1)(d) and Section 11(4A) deal with income of a trust or institution. Further, section 11(1A) permits NPOs to re-invest the sale proceeds of their investments in another eligible asset.

	from transfer of any capital asset not used for the purpose of any charitable activity is included in the gross receipts of NPO.	
2.	Clause 94 (a) to (f) deals with the out goings of a NPO. As per Clause 94(f), NPOs are allowed to carry forward 15% of total income or 10% of gross receipts whichever is higher, to be spent within 3 years from the end of the relevant financial year.	Section 11(1)(a), Section 11(1)(c) and Section 11(2) deals with application of income of a trust or institution. Pursuant to section 11(1)(a), NPOs are permitted to accumulate 15% of their income unconditionally. As per Section 11(2), NPOs can accumulate in excess of the permitted 15% accumulation, for a period of 5 years to be utilized for specific purposes.
3.	There is no grandfathering provisions in respect of NPOs which were set up prior to 1961 and are in operations even today	While the benefit of exemption is not available to the Charitable organisaiton established for a particular religious community or caste, specific provisions have been made to continue the benefits to such trust/institutions established prior to the commencement of the Income Tax Act.
4.	The Code is silent about the trust/institution partly religious and partly charitable	Section 11(1) applies both to charitable as well as religious organizations. It also applies to property held in trusts even partly by charitable/religious purposes if, the trust has been created before the commencement of Income Tax Act, 1961
5.	Clause 95(1)(i) to (vii) deals with modes of investment of a NPO	Section 11 (5) (i) to (xii) prescribes the mode of investing of depositing the money by a trust/institution

9.3 Clause 90 of the Code deals with the Applicability of this Chapter. The clause reads as under:

> 90 (*1*) The provisions of this Chapter shall be applicable to a non-profit organisation, other than any organisation of public importance, specified in the Seventh Schedule.
> (*2*) The Central Government may, subject to such conditions as may be considered necessary, notify a person as a non-profit organisation of public importance for the purpose of the Seventh Schedule.
> (*3*) The provision of this Chapter other than section 95, section 97, section 98, section 99, section 101, section 102 and section 103, shall not apply to a non-profit organization, being a public religious trust or institution

9.4 This provision does not exist in the Income Tax Act, 1961.

9.5 Institute of Chartered Accountants of India (ICAI) has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

In order to avoid confusion, the drafting of the sub-section (3) of section 90 may be simplified.

9.6 The Ministry have submitted that this suggestion will be considered.

9.7 **The Committee desire that Clause 90(3) may be appropriately worded to remove drafting ambiguity and bring greater clarity as to the applicability of this Chapter, as agreed to by the Ministry.**

9.8 Clause 92 of the Code deals with Computation of total income of non profit organisation. The Clause reads as under :

92 (*1*) Subject to the provisions of section 8, the total income of any non-profit organisation in relation to any charitable activity, during the financial year, shall be the gross receipts as reduced by the amount of outgoings, computed in accordance with the cash system of accounting.

(*2*) Notwithstanding anything in sub-section (*1*), the total income of a non-profit organisation, being a company registered under section 25 of the Companies Act, 1956 in relation to any charitable activity, during the financial year, shall be the gross receipts as reduced by the amount of outgoings, computed in accordance with the mercantile system of accounting.

9.9 There is no such specific provision in the Income Tax Act, 1961.

9.10 ASSOCHAM has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

The NPO should also be given the option of adopting either the cash system or accrual system of accounting for tax purposes as is the position at present.

9.11 Institute of Chartered Accountants of India (ICAI) has suggested the following changes in its memorandum submitted to the Committee:

It is suggested that companies other than companies registered under section 25 of the Companies Act, 1956 should be given an option to computer their income as per cash system or mercantile system of accounting.

9.12 The Ministry's reply to the above suggestions is as follows:

Since taxability is on the surplus arising to the NPO, accounting of receipts and payments on cash basis system is the most logical, simple and transparent way of determining the surplus. However, keeping in mind

that companies registered u/s 25 of the Companies Act are required to maintain their account in accordance with the mercantile system of accounting, special carve out for such companies has been made in sub clause (2) of clause 92.

9.13 The Committee desire that the suggestion to allow an option to adopt either the cash system or accrual system of accounting for computing their income as per the existing Act may be considered.

9.14 Clause 93 of the Code deals with Gross receipts of a non profit organisation. The Clause reads as under :

93. (*1*) The gross receipts from any charitable activity shall be the aggregate of the following, namely:—

(*a*) the amount of voluntary contributions received;

(b) any rent received in respect of a property held by the non-profit organisation consisting of any buildings or lands appurtenant thereto;

(*c*) the amount of income derived from any business carried on by the non-profit organisation, if the business is incidental to any charitable activity so carried on;

(*d*) income from transfer of any capital asset computed in accordance with the provisions of sections 46 to 54 (both inclusive) where the asset is not used for the purposes of any charitable activity or any business incidental to such charitable activity;

(*e*) full value of consideration on transfer of any capital asset other than the asset referred to in clause (*d*);
(*f*) the amount of income received from investment of its funds or assets;

(*g*) the amount of any incoming, realisation, proceeds, or subscription received from any source; and

(*h*) any amount, which was received in the last month of the immediately preceding financial year and was deposited in a specified deposit account as referred to in clause (*e*) of section 94.

(*2*) The gross receipts referred to in sub-section (*1*) shall not include—

a) any loan taken during the financial year; and

b) voluntary contributions received with a specific direction that they shall form part of the corpus of the non-profit organisation.

9.15 Clause 94 of the Code deals with outgoings of a non profit organisation. The Clause reads as under:

> 94. The amount of outgoings during the financial year for the purpose of computation of the total income shall be the aggregate of—
>
> (*a*) the amount paid for any expenditure, not being capital expenditure, incurred wholly and exclusively for earning or obtaining any receipts referred to in section 93;
>
> (*b*) the amount paid for any expenditure, incurred for the purposes of carrying out any charitable activity;
>
> (*c*) the amount paid for any capital expenditure for the purposes of any business, if the business is incidental to any charitable activity carried on by the non-profit organisation;
>
> (*d*) any amount applied outside India, if—
>
> (*i*) the amount is applied for an activity which tends to promote international welfare in which India is interested; and
>
> (ii) the non-profit organisation is notified by the Central Government in this behalf;
>
> (*e*) any amount which is received during the last month of the financial year and has been deposited on or before the last day of the financial year in a specified deposit account under such deposit account scheme as may be prescribed; and
> (*f*) any amount accumulated or set apart for carrying on any charitable activity—
>
> (*i*) to the extent of fifteen per cent. of the total income (before giving effect to the provisions of this clause) or ten per cent. of the gross receipts, whichever is higher; and
>
> (ii) invested or deposited in the modes specified in section 95, for a period not exceeding three years from the end of the financial year.

9.16 The existing provision in the Income Tax Act relating to Income from property held for charitable or religious purpose reads as under:

> **11.** (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(*a*) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

(*b*) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

(*c*) income derived from property held under trust—

(*i*) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(*ii*) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;
(*d*) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Explanation.—For the purposes of clauses (*a*) and (*b*),—

(*1*) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(*2*) if, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

(*i*) for the reason that the whole or any part of the income has not been received during that year, or

(*ii*) for any other reason, then—

(*a*) in the case referred to in sub-clause (*i*), so much of the income applied to such purposes in India during the previous year in which the income is

received or during the previous year immediately following as does not exceed the said amount, and

(*b*) in the case referred to in sub-clause (*ii*), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount, may, at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (*i*), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (*ii*), during the previous year immediately following the previous year in which the income was derived.

(1A) For the purposes of sub-section (1),—

(*a*) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(*i*) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain ;

(*ii*) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(*b*) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(*i*) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(*ii*) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of

the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation.—In this sub-section,—

(*i*) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(*ii*) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (*b*) of clause (*1*) of section 55;

(*iii*) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(1B) Where any income in respect of which an option is exercised under clause (*2*) of the *Explanation* to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (*a*) or, as the case may be, sub-clause (*b*), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof—

(*a*) in the case referred to in sub-clause (*i*) of the said clause, of the previous year immediately following the previous year in which the income was received; or

(*b*) in the case referred to in sub-clause (*ii*) of the said clause, of the previous year immediately following the previous year in which the income was derived.

(2) Where eighty-five per cent of the income referred to in clause (*a*) or clause (*b*) of sub-section (1) read with the *Explanation* to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

(*a*) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(*b*) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5):

Provided that in computing the period of ten years referred to in clause (*a*), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded:

Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words "ten years" at both the places where they occur, the words "five years" had been substituted.

Explanation.—Any amount credited or paid, out of income referred to in clause (*a*) or clause (*b*) of sub-section (1), read with the *Explanation* to that subsection, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes * * *.

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

9.17 Bombay Chartered Accountants Society has suggested the following changes in its memorandum submitted to the Committee:

It is strongly suggested that the present position of permitting NPOs to accumulate 15% of their income unconditionally should not be disturbed. Any extra accumulation should also be allowed with the condition that it should be utilized within a period of 5 years.

In order to enable NPOs to take up large and meaningful projects the present provisions of permitting them to accumulate income beyond the permitted 15% should be continued.

Income from sale of investments held by NPOs will also be treated on par with other income of the NPO. Hence such income will also have to be spent subject to permissible accumulation. The present provisions of sec 11(1A) permitting NPOs to reinvest the sale proceeds of their investment in another eligible asset should be continued as the same is well settled and simple to follow. It also facilitates keeping of their corpus intact by NPOs along with capital appreciation.

The well settled principle, that business income feeding charity is entitled to exemption, should be retained.

The activities of charitable institutions should be regarded as charitable and the income of these entities should be exempt. Clarification to this extent should be provided in the Code.

The concept of real or commercial income for NPOs was well settled and the same should not be replaced with an artificial concept of income.

9.18 ICAI has suggested the following changes in its memorandum submitted to the Committee:

a) the provisions of the existing law should be restored.

b) the conditions specified in (i) and (ii) of 94 (f) seem to be mutually exclusive. Thus, the word “and” be replaced by the word “or”.

c) the period of “three years” may be replaced with “five years”.

d) the words “for a period not exceeding three years” in clause (ii) may be appropriately amended. It should be specifically mentioned that if investment is made in immovable property to be used for charitable/religious purposes, there should be no pre-condition or time frame.

9.19 ICSI has suggested the following changes in its memorandum submitted to the Committee:

The proposed provisions in DTC have re-affirmed that the NPOs have to apply 100% of their income for charitable purposes. Under ITA 1961, NPOs can transfer 15% of their income to corpus fund every year. The accumulation of income which can be carried forward to future years is restricted to 15% of total income or 10% of gross receipts whichever is higher, which should be utilized within a period of 3 years. While, as per

the present law 85% of unspent amount can be accumulated and can be spent in the next five years.

It is suggested that the DTC should allow reasonable time for execution of projects which cannot be completed in one year. Further, a provision should be there to allow in some cases for accumulating the 100% of the receipts for next three years.

9.20 The Ministry's reply to the above suggestions is as follows:

Under the DTC, an NPO is allowed to accumulate 15% of the total income or ten percent of gross receipt whichever is higher provided it is invested in specific mode. The accumulation is allowed for a period of three years. Secondly, the funds received in the last month of the year are allowed to be spent in next year as they are treated as outgoing of current year. Thirdly, a standard basic exemption of Rs. 1 lakh is available to all NPOs before any tax is levied. These provisions should provide sufficient flexibility to an NPO for planning its expenditure beyond the year of receipt while at the same time ensuring that the main purpose is not lost in merely accumulation of funds.

Clause 93 provides that income from transfer of any capital asset which is not used for the purpose of charitable activity or incidental business shall be worked out on net basis i.e. in accordance with the provisions of clause 46 to 54 of the DTC. So far as assets used for charitable activity is concerned the full value of consideration will be taken into account for determining the gross receipts. The expenditure allowed is any expenditure incurred for any purposes of carrying out any charitable activity. The capital expenditure for incidental business is also allowed. Thus if any capital asset is acquired by an NPO, for carrying out charitable activity it would be an allowable expenditure. The principle that business income feeding charity should be entitled to exemption is not a feature of even the current law. Charitable purpose has been defined to specifically exclude the commercial activity receipts of which exceed a threshold.

9.21 FICCI has suggested the following changes in its memorandum submitted to the Committee:

All the charitable organizations, NPOs, NGOs, chamber of commerce and trade organizations and section 25 companies, should be tax exempt so long these are adhering to the rigid stipulations provided / to be provided under the law.

9.22 Bombay Chartered Accountant Society has suggested the following changes in its memorandum submitted to the Committee:

It is suggested that in such cases for applicability of these conditions, the threshold limit should be provided, say Rs 5 lakhs.

9.23 The Ministry's reply to the above suggestions is as follows:

> An NPO will be liable to tax at the rate of 15% on its total income, which shall be gross receipts as reduced by the amount of outgoings. The outgoings include 15% of the total income or 10% of gross receipts whichever is higher provided it is invested in specified mode. In addition the funds received during the last month of financial year and deposited in a specified account will also be reduced from the total income. In addition to the above deductions, an exemption limit of Rs. 1 lakh is sufficient and would provide sufficient flexibility to an NPO for planning its expenditure. Therefore, any further increase in exemption limit will defeat the very purpose of the new regime of taxation of NPOs. Even the taxability at a lower rate after providing for threshold exemption arises only if an NPO is unable to spend its receipts for charitable purpose during the year.

9.24 Calcutta Chambers of Commerce has suggested the following changes in its memorandum submitted to the Committee:

> DTC is silent about the trust/institution, partly religious and partly charitable organizations. In RDP it was provided that in case the trust deed/ memorandum of the institutions contains a clause specifying the application of its gross receipts in the pre-determined ratio between charitable and religious activities the trust would be entitled to exemption in respect of the income from public religious activities. The income from charitable activities of the trust would be governed by the provisions as applicable to NPOs.

9.25 The Ministry reply to the above suggestions is as follows:

> Inclusion of partly religious or charitable organizations within the purview of this chapter would again make the tax regime of NPOs very complex resulting in unintended large scale litigations. Charitable organisations are to be registered and taxed @15% of surplus as detailed earlier. Religious organisations are exempt under entry no.39 of Seventh Schedule. Therefore, an organisation would need to register either as charitable organisation or as a religious organisation. Donations are eligible for deduction in hands of donor in case of charitable organisation but not in case of religious trust.

9.26 The Committee agree in principle with the distinction made in the Code between charitable and religious organizations with differential tax treatment. While emphasizing the principle that genuine charitable activity should be protected and encouraged, the Committee note that the present proposals on this count are not unreasonable; they provide that an NPO will be liable to tax at the rate of 15% on its total income, which shall be gross receipt as reduced by the amount of outgoings; in addition, the

funds received during the last month of the financial year and deposited in a specified account will also be reduced from the total income. A standard basic exemption of Rs. 1 lakh is available to all NPOs before any tax is levied. However, a significant departure has been made from the existing provisions of the Income Tax Act which stipulate that income upto 15% of a Non-profit Organisation (NPO) could be set aside for use for charitable purposes without any restriction. The Committee note that this provision is sought to be withdrawn in the Direct Taxes Code. The Committee are of the opinion that if NPOs are compelled to spend all their income, then this may adversely affect their sustainability in the future. They may be forced to survive precariously from year to year, without any long range activities or planning. The Committee would, therefore, recommend that the existing provisions may be restored so that NPOs become sustainable entities in the long run.

As regards other items proposed in respect of NPOs like carry forward and set off of losses, capital gains on transfer of financial asset and permitting of taxes other than income tax as permissible outgoings, the Committee would like the Ministry to restore the status quo ante with a view to simplifying tax procedures for the NPOs. The Committee desire that genuine charitable activities should be promoted and sustained and tax policies and procedures should not act as a hindrance in this process. It would thus also be reasonable to restore the existing provision in section 11(1A) of the present Act enabling the NPOs to reinvest in a prescribed manner sale proceeds of their capital assets held under trust wholly for charitable or religious purposes.

In this context, the Committee would also recommend that donations to religious trusts should also be eligible for tax exemptions in the hands of the donor .

9.27 Clause 98 of the Code deals with Registration of NPOs. The Clause reads as under:

> **98**.(*1*) A non-profit organisation shall make an application for its registration in the prescribed form and manner to the Commissioner.

(*2*) The provisions of sub-section (*1*) shall not apply to any non-profit organization which has been granted approval or registration under the Income tax Act, 1961, as it stood before the commencement of this Code, if the organisation fulfils such conditions as may be prescribed.

314. In this Code, unless the context otherwise requires —

(*169*) "non-profit organisation" means an organisation, by whatever name called, including a trust, if—
(*i*) it is not established for the benefit of any particular caste or religious community;

(*ii*) it does not provide any benefit for the members of any particular caste or religious community;

(*iii*) it is established for the benefit of the general public or for the benefit of the Scheduled Castes, the Scheduled Tribes, backward classes, women or children;

(*iv*) it is established for carrying on charitable activities;

(*v*) it is not established for the benefit of any of its members;

(*vi*) it actually carries on the charitable activities during the financial year;

(*vii*) the actual beneficiaries of its activities are the general public, the Scheduled Castes, the Scheduled Tribes, backward classes, or women or children; and

(*viii*) it is registered as such under section 98;

9.28 The existing provision as per the Income Tax Act 1961 is as follows:

12A. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(*a*) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA :

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

(*i*) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(*ii*) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied:

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

(*aa*) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA;

12AA. (1) The Commissioner, on receipt of an application for registration of a trust or institution made under clause (*a*) or clause (*aa*) of subsection (1) of section 12A, shall—

(*a*) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(*b*) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(*i*) shall pass an order in writing registering the trust or institution;

(*ii*) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant

Provided that no order under sub-clause (*ii*) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

9.29 ICAI has suggested the following changes in its memorandum submitted to the Committee:

Clause 98 (1) provides that a non-profit organization shall make an application for its registration in the prescribed form and manner to the Commissioner.
Clause 314 (169) defines the term "non profit organization" and one of the conditions to be fulfilled is that it is registered as such under section 98.

It is suggested that the looping should be removed.

9.30 Bombay Chartered Accountants Society has suggested the following changes in its memorandum submitted to the Committee:

> The time limit for applying for registration should be extended to 6 months from the end of the relevant financial year.
>
> There should be provisions for condonation of delay in case of genuine reasons for delay in filing application for registration.

9.31 The Ministry reply to the suggestion is as follows:

> ICAI suggestion will be considered. Further, the manner of making an application will be specified in rules. Clause 98(5) provides that the registration will be effective from the financial year in which the application for registration has been made. The current law also provides the same position. The power of condonation is not available under the current law also.

9.32 **The Committee desire that one of the terms of definition of NPO provided under Clause 314 (viii) that 'it is registered as such under section 98' may be made congruous with the sub-clause (2) of Clause 98 relating to organizations registered under the existing Act, as agreed to by the Ministry. The definition relating to Non-Profit Organization of "public importance" also requires to be amplified and made more inclusive, minimizing executive discretion in the matter.**

9.33 Clause 103 of the Code defines the term "Charitable activity":

> **103**. In this Chapter, unless the context otherwise requires,—
>
> (*b*) "charitable activity" means the following activities carried out in India, namely:—
>
> (*i*) relief of the poor;
>
> (*ii*) advancement of education;
>
> (*iii*) medical relief;
>
> (*iv*) preservation of environment (including watersheds, forests and wildlife);
>
> (*v*) preservation of monuments or places or objects of artistic or historic interest; or

(*vi*) advancement of any other object of general public utility, not involving the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation thereto, for a cess, fee or any other consideration (irrespective of nature of use, application or retention of the income from such activity) and where the gross receipts during the financial year from such activity exceed ten lakh rupees;

314 "non-profit organisation" means an organisation, by whatever name called, including a trust, if—

(*i*) it is not established for the benefit of any particular caste or religious community;

(*ii*) it does not provide any benefit for the members of any particular caste or religious community;

(*iii*) it is established for the benefit of the general public or for the benefit of the Scheduled Castes, the Scheduled Tribes, backward classes, women or children;

(*iv*) it is established for carrying on charitable activities;

(*v*) it is not established for the benefit of any of its members;

(*vi*) it actually carries on the charitable activities during the financial year;

(*vii*) the actual beneficiaries of its activities are the general public, the Scheduled Castes, the Scheduled Tribes, backward classes, or women or children; and

(*viii*) it is registered as such under section 98;

9.34 The existing provision in the Income Tax Act, 1961 is as follows:

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(*c*) income derived from property held under trust—

(*i*) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(*ii*) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

9.35 Bombay Chartered Accountants Society has suggested the following changes in its memorandum submitted to the Committee:

> A notified NPO is entitled to deduction under section 94(d) for amounts applied outside India for an activity, which tends to promote international welfare. This benefit is available if it is an NPO. The definition of an NPO in clause 314 requires it to carry on charitable activity. The definition of charitable activity is given in sec. 103(b) which refers to activities carried out in India. A trust carrying on only activities outside India which promote international welfare cannot be said to be carrying on charitable activities as defined and would not be an NPO. Hence for the benefit of 94(d), an appropriate amendment is required either to the definition of 'charitable activity' or to the definition of 'non-profit organisation'. As clause 94(d) is in contradiction with the definitions of the term "charitable activity" which restricts the listed activities in India.

9.36 The reply of the Ministry is as follows:

> Clause 103(b) defines charitable activity to mean the activities specified to carried out in India. Clause 92 provides that the total income of any Non profit organization in relation to any charitable activity shall be the gross receipts as reduced by the amount of outgoings. Clause 94 provides that the amount of outgoings for computing the total income shall be aggregate of items listed in sub clause (a) to sub clause (f) therein. Sub clause (d) provides that any amount applied by a notified non profit organization, outside India for promotion of international welfare in which India is interested, will be taken into account as an expenditure while computing the total income of the NPO. Therefore, the modification on the lines suggested is not really required. However, further clarification to provide that an organisation engaged in an activity which tends to promote international welfare in which India is interested and which is approved by the central government to be treated as NPO will be considered.

9.37 **The Committee desire that necessary inclusion in regard to organizations engaged in an activity intended to promote international welfare in which India is interested and is approved by Central Government, may be incorporated in the definition of NPO proposed under either Clause 314 or under Clause 103 defining 'charitable activity, as agreed to by the Ministry'.**

CHAPTER - X – COMPUTATION OF BOOK PROFIT

10.1 Normally, a company is liable to pay tax on the income computed in accordance with the provisions of the Income Tax Act, but the profit and loss account of the company is prepared as per provisions of the Companies Act. There were large number of companies who had book profits as per their profit and loss account but were not paying any tax because income computed as per provisions of the Income Tax Act was either nil or negative or insignificant. In such case, although the companies were showing book profits and declaring dividends to the shareholders, they were not paying any income tax. These companies are popularly known as Zero Tax Companies. In order to bring such companies under the Income Tax Act net, Minimum Alternate Tax (MAT) was introduced.

10.2 The concept of tax on book profits was introduced originally under section 115J by the Finance Act, 1987 with effect from A.Y. 1988-89 and was withdrawn with effect from A.Y. 1990-91. Here, the tax was levied on 30% of Book Profits.

Subsequently the concept was reintroduced with a few changes, imposing MAT under section 115JA with effect from A.Y. 1997-98 and had effect up to A.Y.2000-01. Here, if the taxable income of a company computed under this Act, in respect of any previous year relevant to the assessment year commencing on or after 1.4.97 but before 1.4.2001 is less than 30% of its book profits, the total income of such company, chargeable to tax for the relevant previous year shall be deemed to an amount equal to 30% of such book profits.

Section 115JB was introduced in Finance Act, 2000 w.e.f. 1.4.2001, whereby, a company shall be liable to pay higher of tax computed under Income Tax Act provisions and tax computed under Sec115JB.

10.3 Tax rate applicable u/s 115JB for various assessment years are as follows:

Period	MAT Rate
A.Y.2001-02 to A.Y.2006-07	7.5%
A.Y.2007-08 to A.Y. 2009-10	10%
A.Y.2010-11	15%

A.Y.2011-12 onwards	18%
As proposed DTC Bill, 2010	20%

10.4 W.e.f. 1.4.2005, the provisions of Sec 115JB shall not apply to the income from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone.

Clauses proposed in the DTC Bill, 2010

Clause 104 – Computation of Book Profit

10.5 This clause seeks to provide the method of computation of book profit in case of a company for the purposes of computation of the tax payable on such book profit.

10.6 Clause 104 reads as under :

104. (1) Notwithstanding anything in this Code, where the normal income-tax payable for a financial year by a company is less than the tax on book profit, the book profit shall be deemed to be the total income of the company for such financial year and it shall be liable to income-tax on such total income at the rate specified in Paragraph A of the Second Schedule.

(*2*) Subject to the provisions of this Chapter, the book profit referred to in sub-section (*1*) shall be computed in accordance with the formula—

A+B-(C+D)
Where A= the net profit, as shown in the profit and loss account for the financial year prepared in accordance with the provisions of section 105;

B = the aggregate of the following amounts, if debited to the profit and loss account:

(*a*) the amount of any tax paid or payable under this Code, and the provision therefor;
(*b*) the amount carried to any reserves, by whatever name called;
(*c*) the amount set aside as provision for meeting unascertained liabilities;
(*d*) the amount by way of provision for losses of subsidiary companies;
(*e*) the amount of dividends paid or proposed;
(*f*) the amount of depreciation;
(*g*) the amount of deferred tax and the provision therefor;
(*h*) the amount set aside as provision for diminution in the value of any asset;

(*i*) the amount of any expenditure referred to in clause (*a*) of sub-section (*1*) of section 18;

C = the aggregate of the following amounts:

(*a*) the amount of depreciation debited to the profit and loss account **(excluding the depreciation on account of revaluation of assets);**

(*b*) the amount withdrawn from the revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (*a*);

(*c*) the amount withdrawn from any reserve or provision if any such amount is credited to the profit and loss account and such amount has been taken into account for computation of the book profit of any preceding financial year;

(*d*) the amount of profits of a sick industrial company for any financial year comprised in the period commencing from the financial year in which the said company has become a sick industrial company under sub-section (*1*) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the financial year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses;

(*e*) the amount of any income referred to in section 10 read with the Sixth Schedule, if credited to the profit and loss account;

(*f*) the amount of deferred tax, if any such amount is credited to the profit and loss account;

D = the amount of loss brought forward.

(*3*) In sub-section (*2*), the loss brought forward shall be—

(*i*) nil, if such loss brought forward (excluding depreciation) or unabsorbed depreciation as per books of account, as the case may be is nil; or

(*ii*) the amount of loss brought forward (excluding depreciation) or unabsorbed depreciation as per books of account, whichever is less, in any other case.

(*4*) In sub-section (*2*), the amount of tax shall include—

(*a*) any interest charged or chargeable under this Code;

(*b*) any tax on distributed profits under section 109 ;
(c) any tax on distributed income under section 110;

(*d*) any tax paid on branch profits under section 111; and

(*e*) any tax on wealth under section 112.

(*5*) Every company to which this section applies shall obtain a report in such form as may be prescribed from an accountant certifying that the book profit has been computed in accordance with the provisions of this section.

(*6*) In this Chapter—

(*a*) "normal income-tax" means the income-tax payable for a financial year by a company on its total income in accordance with the provisions other than the provisions of this Chapter;

(*b*) "tax on book profit" means the amount of tax computed on book profit at a rate specified in Paragraph A of the Second Schedule.

10.7 **Existing provision in the Income Tax Act, 1961**

115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2010, is less than fifteen per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of fifteen per cent.

(2) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956) :

Provided that while preparing the annual accounts including profit and loss account. —

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act. —

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

Explanation [1].—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

(a) the amount of income-tax paid or payable, and the provision therefor; or

(b) the amounts carried to any reserves, by whatever name called [other than a reserve specified under section 33AC]; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed ; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply; or

(g) the amount of depreciation, or

(h) the amount of deferred tax and the provision therefor,

(i) the amount or amounts set aside as provision for diminution in the value of any asset, if any amount referred to in clauses (a) to (i) is debited to the profit and loss account, and as reduced by,—

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which

the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 115JA, as the case may be; or

(ii) the amount of income to which any of the provisions of section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or

(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

(iib) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia); or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or

(iv) the amount of profits eligible for deduction under section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to
the conditions specified in that section; or

(v) the amount of profits eligible for deduction under section 80HHE computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or

(vi) the amount of profits eligible for deduction under section 80HHF computed under sub-section (3) of that section, and subject to the
conditions specified in that section; or
(vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 174 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation —For the purposes of this clause, “net worth” shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 35 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

(viii) the amount of deferred tax, if any such amount is credited to the profit and loss account.

Explanation 2.— For the purposes of clause (a) of Explanation 1, the amount of income-tax shall include—

(i) any tax on distributed profits under section 115-O or on distributed income under section 115R;

(ii) any interest charged under this Act;

(iii) surcharge, if any, as levied by the Central Acts from time to time;

(iv) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and

(v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the Explanation below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142.

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.

10.8 Federation of Indian Chambers of Commerce and Industry (FICCI) and Confederation of Indian Industry (CII) have suggested the following in the proposed clause in their memoranda submitted to the Committee :

(i) Levy of MAT on sectors eligible for claiming investment based incentives need to be relooked as it is an avoidable burden on such companies. Preferably, a waiver could be provided under MAT in the initial years.

Also, investment companies whose core business is investment are not able to take credit of the MAT paid, as their only source of income is either dividend or interest or capital gains. This has been resulting in additional cost for the investment companies. Preferably, these be outside the MAT ambit or could be thought of for concessional tax treatment.

Further, companies be allowed to set-off entire past book losses including unabsorbed depreciation before they are subjected to MAT.

(ii) Life Insurance companies should be excluded from the purview of MAT as these companies are required to prepare their accounts in accordance with the guidelines prescribed by IRDA and it will be difficult for these companies to prepare/recast their accounts in accordance with format prescribed in Schedule VI of Companies Act.

10.9 During the sitting of the Standing Committee on Finance held on 11th November, 2011, the Committee while observing that the Ministry has not accepted the suggestion regarding levy of MAT on sections eligible for claiming investment base incentives should be dropped, the Committee have expressed their views as under :

> "There may be a service company, which may have incurred huge losses and they may not have many assets. So their depreciation is very low. Therefore, the Government must allow both loss and depreciation to be deducted first and then if there is a resultant profit, Minimum Alternate Tax should be applied to those companies".

10.10 Further with regard to the suggestion submitted by Bombay Chamber of Commerce and Industry that MAT should not be imposed on insurance companies, banks and electricity companies, the Ministry in their written replies submitted to the Committee stated that it **will be considered.**

10.11 **As regards the suggestion relating to waiving of MAT specifically on insurance companies, banks and electricity companies, the Committee would expect suitable amendments / rectifications, as agreed to by the Ministry, to be considered for inclusion in the Bill.**

10.12 As regards the MAT for the SEZ developers/units, Institute of Chartered Accountants of India in their written submission suggested that profits of SEZ developers/units should be excluded from applicability of MAT provisions as it is currently prescribed.

10.13 In their replies to the said suggestion, the Ministry stated that the position in the current law has also changed and, vide Finance Act, 2011, MAT has been levied on both. Hence, not acceptable.

10.14 Further, in response to the Committee's suggestion that MAT should not be applied on the SEZs, the Secretary, Revenue in his deposition before the Committee stated as follows :

> "The provision of MAT is not dependent on implementation of DTC. MAT has been implemented, it is now not related to DTC. That has already been done vis-à-vis the SEZs, and it is to be incorporated in the DTC".

10.15 **While endorsing the view of the Ministry that the MAT on SEZs has already been brought on the statute, the Committee desire that the necessary amendments in the Bill may be made accordingly. SEZ Act in this regard should also be modified so as to bring harmony between both the Acts. Appropriate grandfathering proviso may be incorporated for the period for which exemption has been originally granted.**

Clause 105 - Preparation of profit and loss account for computing book profit

10.16 Clause 105 relates to preparation of profit and loss account for computing book profit. The said clause seeks to provide the manner in which a company has to prepare its profit and loss account for the purposes of computation of its book profit under clause 104.

10.17 Clause 105 provides as under :

105. (*1*) Every company shall, for the purposes of section 104, prepare its profit and loss account for the relevant financial year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956.

(*2*) In this section, the accounting policies, the accounting standards adopted for preparing such accounts including profit and loss account and the method and rates adopted for calculating the depreciation shall, in the case of a company, be the same as have been adopted for the purpose of preparing such accounts including profit and loss account laid by the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956.

(*3*) Where the company has adopted or adopts the financial year under the Companies Act, 1956, which is different from the financial year under this Code—

(*i*) the accounting policies;

(*ii*) the accounting standards adopted for preparing such accounts including profit and loss account;

(*iii*) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant financial year.

10.18 **Existing provision in the Income Tax Act, 1961**

115JB (2) as above.

10.19 The suggestions as received from Indian Banks Association on this clause are as under :

(i) Banks prepare their annual accounts based on the regulations of the Banking Regulation Act, 1949. These accounts should be accepted for the

computation of MAT liability. Banks should not be required to re-do their annual accounts under Schedule VI of the Companies Act, 1956.

Clause 105 (1)

10.20 According to the Institute of Chartered Accountants of India (ICAI), the sub-clause [clause 105(1)] may be re- worded as follows :-

"Every company shall, for the purposes of section 104, prepare its profit and loss account for the relevant financial year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 OR THE APPLICABLE STATUTUE".

Insurance companies, banks and electricity companies are required to prepare their accounts as per the provisions of their respective statutes.

However, the language of proposed section 105 (1) mandates every company to prepare its profit and loss account in accordance with Schedule VI of the Companies Act, 1956, which would be difficult for the above-mentioned companies.

Therefore, it is suggested that the accounts prepared as per the provisions of the relevant statute of above-mentioned companies should be accepted for the purposes of calculating Minimum alternate tax.

Clause 105 (2)

10.21 According to the Institute of Chartered Accountants of India (ICAI) the sub-clause [clause 105(2)] may also be re-worded as follows :

"In this section the accounting policies, the accounting standards adopted for preparing such accounts including profit and loss account and the method and rates adopted for calculating the depreciation shall, in the case of a company, be the same as have been adopted for the purpose of preparing such accounts including profit and loss account laid by the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 OR RELEVANT STATUTE".

Clause 105 (3)

10.22 According to the Institute of Chartered Accountants of India (ICAI) the sub-clause [clause 105(3)] may also be re-worded as follows :

"Where the company has adopted or adopts the financial year under the Companies Act, 1956 OR RELEVANT STATUTE, which is different from the financial year under this Code-

(i) the accounting policies

(ii) ……”

10.23 While agreeing with the above said suggestions made by several institutions, the Ministry of Finance (Department of Revenue) in their written submission stated that all the above said suggestions **will be considered.**

10.24 **The Committee desire that suitable drafting changes as suggested regarding preparation of profit and loss accounts by the companies as per the provisions of their respective statutes be made in the Bill so as to be in harmony with the relevant statutes governing the said companies and these companies may not be required to re-do their annual accounts under the Companies Act, 1956.**

Clause 106 – Tax credit for tax paid on book profit

10.25 This clause seeks to provide the manner in which tax credit for a financial year, arising due to payment of income tax on book profit in such year, is to be calculated and carried forward and the manner in which such tax credit is to be allowed in succeeding years.

10.26 Clause 106 reads as follows :

106. (*1*) The credit for tax paid by a company under section 104 shall be allowed to it in accordance with the provisions of this section.

(*2*) The tax credit of a financial year to be allowed under sub-section (*1*) shall be the excess of tax on book profit over the normal income-tax.
(*3*) No interest shall be payable on tax credit allowed under sub-section (*1*).

(*4*) The amount of tax credit determined under sub-section (*2*) shall be carried forward and allowed in accordance with the provisions of sub-sections (*5*) and (*6*) but such carry forward shall not be allowed beyond the fifteenth financial year immediately succeeding the financial year for which tax credit becomes allowable under sub-section (*1*).

(*5*) The tax credit shall be allowed for a financial year in which the normal income-tax exceeds the tax on book profit and the credit shall be allowed to the extent of the excess of the normal income-tax over the tax on book profit, balance of the tax credit, if any, shall be carried forward.

(*6*) If the amount of normal income-tax or the tax on book profit is reduced or increased as a result of any order passed under this Code, the amount of tax credit allowed under this section shall also be varied accordingly.

(*7*) In the case of conversion of a private company or unlisted public company into a limited liability partnership under the Limited Liability Partnership Act, 2008, the provisions of this section shall not apply to the successor limited liability partnership.

(*8*) In this section, the expressions "private company" and "unlisted public company" shall have the meaning respectively assigned to them in the Limited Liability Partnership Act, 2008.

10.27 **Existing provision in the Income Tax Act, 1961**

Tax credit in respect of tax paid on deemed income relating to certain companies.

115JAA. (1) Where any amount of tax is paid under sub-section (1) of section 115JA by an assessee being a company for any assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

(1A) Where any amount of tax is paid under sub-section (1) of section 115JB by an assessee, being a company for the assessment year commencing on the 1st day of April, 2006 and any subsequent assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

(2) The tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JA and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:
Provided that no interest shall be payable on the tax credit allowed under sub-section (1).

(2A) The tax credit to be allowed under sub-section (1A) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JB and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:

Provided that no interest shall be payable on the tax credit allowed under subsection (1A).

(3) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1).

(3A) The amount of tax credit determined under sub-section (2A) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5)

but such carry forward shall not be allowed beyond the tenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1A).

(4) The tax credit shall be allowed set-off in a year when tax becomes payable on the total income computed in accordance with the provisions of this Act other than section 115JA or section 115JB, as the case may be.

(5) Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of sub-section (1) of section 115JA or section 115JB, as the case may be for that assessment year.

(6) Where as a result of an order under sub-section (1) or sub-section (3) of section 143, section 144, section 147, section 154, section 155, sub-section (4) of section 245D, section 250, section 254, section 260, section 262, section 263 or section 264, the amount of tax payable under this Act is reduced or increased, as the case may be, the amount of tax credit allowed under this section shall also be increased or reduced accordingly.

(7) In case of conversion of a private company or unlisted public company into a limited liability partnership under the Limited Liability Partnership Act, 2008 (6 of 2009), the provisions of this section shall not apply to the successor limited liability partnership.

Explanation—For the purposes of this section, the expressions "private company" and "unlisted public company" shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009).

10.28 Indian Banks Association (IBA), Institute of Chartered Accountants of India (ICAI), Indian Chamber of Commerce (ICC), Calcutta, The Bengal Chamber of Commerce and Industry (BCCI) and The Madras Chamber of Commerce and Industry (MCCI) have suggested the following on this clause in their memorandum submitted to the Committee :

(i) Unutilized MAT credit balances as on 31 March 2012 under the ITA should be allowed to be carried forward as it is tax which but for these MAT provisions the entity would not have paid under the ITA. It is therefore recommended that such MAT credit be allowed to be carried forward for the unexpired term and set off should be allowed accordingly against the normal tax payable under the DTC regime.

(ii) It is proposed that a provision may be inserted under section 106 to the effect that MAT credit balance as on 31 March, 2012 should be allowed to be set-off and carried forward in the Direct Taxes Code regime.

It is suggested that MAT credit should be allowed to be carried forward at the time of conversion of closely held company to a Limited Liability Partnership.

The Direct Taxes Code is silent in relation to MAT credit brought forward from the last Assessment year under the Income-tax Act, 1961 for set off against the book profits under the Direct Taxes Code. Explicitly allowing such benefit will be equitable and will avoid litigation in this context.
Provisions relating to Minimum Alternate Tax are presently not applicable to Limited Liability Partnership. Therefore, the MAT credit available to a closely held company converting into an LLP would lapse at the time of conversion. This would discourage the formation of LLPs which may not be intended.

10.29 The Ministry in their written submission on the above said suggestions stated as under :

> "So far as MAT credit balance as on 31.3.2012 in the case of companies is concerned, the provision to deal with the same **will be considered**. There is no justification for allowing MAT credit to the LLPs as the business organisation changes from a company to a partnership. Even the Income-tax Act does not provide this facility".

10.30 The Committee find that under the existing provisions of Income tax Act, 1961, the companies are allowed to claim tax credit in respect of tax paid by them. The Committee, therefore, recommend that necessary modifications, may be made in the Bill to address the suggestion regarding carry forward of unutilized MAT credit balance as on 31st March, 2012 or a later date.

CHAPTER – XI- DIVIDEND DISTRIBUTION TAX (DDT)

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

11.1 Dividend distribution tax is the tax levied by the Government on companies according to the dividend paid to a company's investors. Every domestic company is liable to pay Dividend Distribution Tax @ 15% on the amount declared, distributed or paid by such company by way of dividends. The effective rate of tax works out to 16.995%.

Clause 109 – Tax on distributed profits of domestic companies

11.2 Clause 109 is the only clause of Part B and Chapter VII of the Bill and deals with tax on distributed profits of domestic companies or dividend distribution tax. The said clause provides that every domestic company shall be liable to pay tax on the amount of dividend declared, distributed or paid (whether interim or otherwise) to its shareholders, whether out of current or accumulated profits. The dividend distribution tax shall be charged on the dividend declared, distributed or paid at the rate specified in Paragraph B of the Second Schedule to the Bill.

11.3 Clause 109 reads as under :

109. (*1*) Every domestic company shall be liable to pay tax on any amount of dividend declared, distributed or paid (whether interim or otherwise) to its shareholders, whether out of current or accumulated profits.

(*2*) The tax on the dividend shall be charged at the rate specified in Paragraph B of the Second Schedule, on the amount referred to in sub-section (*1*).

(*3*) The amount referred to in sub-section (*1*) shall be reduced by the amount of dividend, if any, received by the domestic company during the financial year, if –

(*i*) such dividend is received from its subsidiary; and

(*ii*) the subsidiary has paid tax under this section on such dividend.

(*4*) The domestic company or the principal officer of such company responsible for making payment of the dividend, as the case may be, shall be liable to pay the tax on dividend to the credit of the Central Government within a period of fourteen days from the date of declaration, distribution or payment of such dividend, whichever is earliest.

(*5*) No deduction under any other provision of this Code shall be allowed to the domestic company or a shareholder in respect of the dividend charged to tax or the tax thereon.

(*6*) The tax on dividend so paid by the domestic company shall be treated as the final payment of tax in respect of the dividend declared, distributed or paid and no further credit shall be claimed by the domestic company or by any other person in respect of the tax so paid.

(*7*) If the domestic company or, as the case may be, the principal officer of such company responsible for making payment of the dividend does not pay the tax in accordance with the provisions of this section, then, it or he shall be deemed to be an assessee in default in respect of the tax payable by it or him and the provisions of this Code relating to the collection and recovery of tax shall apply.

(*8*) If the domestic company or, as the case may be, the principal officer of such company fails to pay the whole or any part of the tax on dividend referred to in sub-section (*2*), within the time allowed under sub-section (*4*), then, it or he shall be liable to pay simple interest at the rate of one per cent. for every month on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

(*9*) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of Part A of this Code, the tax on dividend declared, distributed or paid under sub-section (*1*) shall be payable by such company.

(*10*) In this section, —

(*a*) a company shall be a subsidiary of another company if such other company holds more than fifty per cent. of nominal value of the equity share capital of the company;

(*b*) "dividend" shall not include any payment referred to in item (*e*) of sub-clause (I) of clause (*81*) of section 314.

Clause 109(1)

11.4 As given above.

11.5 **Existing provision in the Income Tax Act, 1961**

115-O(6) Notwithstanding anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2005 out of its current income either in the hands of the Developer or enterprise or the person receiving such dividend.

11.6 As regards the rate for levy of DDT, the following suggestion has been received from an expert :

> "The Dividend Distribution Tax should not be more than 10 per cent under any circumstances especially when we want the country to compete with our neighbouring country. This is a must for the growth of trade and industry in the country which will ultimately provide more employment opportunities and would help in increasing the GDP of the country".

11.7 The Ministry in their written reply to this suggestion stated as under :

> "Tax rates are subject to the revenue needs of the Government and the overall economic environment. There is no formula to arrive at the perfect tax rate. Therefore, the suggestion that the rate of DDT should not exceed 10 per cent under any circumstances is not acceptable".

11.8 FICCI, ASSOCHAM and Bombay Chamber of Commerce and Industry, on this clause further suggested as follows :

> "In case of debt mutual funds, DDT is not applicable under DTC and dividend is taxable in hands of recipient. This provision will adversely affect debt fund industry. It is suggested that dividend income be taxed at a flat rate of 15% (comparable with DDT rate in the hands of recipient)"

11.9 The Ministry on the said suggestion replied as under :

> "The income distributed is in the nature of interest. Therefore, in order to avoid any tax arbitrage, it is being taxed in the hands of recipients".

11.10 The Committee during the sitting have also expressed their view on this issue that dividend to a certain limit must be taxed and small investors whose share dividend income is small could be exempted from Dividend Distribution Tax.

11.11 In response to the above said suggestion, the Ministry in their written replies stated as under :

> "DDT is payable by a company and not by the shareholder. Any deduction from the base which is subject to the DDT will only be advantageous to the Company and not to the shareholder. If the intention is to provide more dividend to small shareholders (on the presumption that the same is not subject to the DDT), then the rate of dividend payable to this class of shareholders will be different from the rate of dividend paid to others, which is not permissible under the Companies Act".

11.12 On this clause, the Committee during evidence further expressed their views as under :

"The provisions of Dividend Distribution Tax should bring equity. The proposed taxation is not equitable as it provides huge concession to persons in the 30% tax bracket. Instead there should be some exemption from dividend distribution tax for small investors in shares".

11.13 The Ministry while submitting their comments on the above-said views of the Committee stated as under :

"In India, a classical system of taxation is followed for corporates whereby first income is taxed in the hands of a company and the company's post tax income is then distributed to shareholders. Before introduction of Dividend Distribution Tax (DDT) on companies, withholding tax (TDS) was levied on companies and the dividend received in the hands of shareholders was subjected to tax at the rate applicable to them. Credit of tax deducted at source was allowed to shareholders. This scheme raised a number of administrative issues like tax to be deducted at source (TDS) by the company, reporting of tax deducted at source in case of large number of shareholders, giving credit to shareholders on the basis of TDS statement filed by the companies. In view of these administrative difficulties, a dividend distribution tax system was introduced whereby tax is paid by the company from out of the distributable surplus at the time of distribution of dividends and income by way of dividends received by the shareholders is treated as exempt. Except for one year (i.e. 2001-02), the system of DDT to be paid by the company is in place since 1997-98 till date.

In this system, there cannot be a separate rate of DDT for small and large shareholders as the tax is being levied on the company and not on the shareholders. Even if the rate is lowered in case of small shareholders, the benefit is not passed to the shareholder as there cannot be two different rates of dividend payable by a company for two different classes of shareholders.

Moreover, the rate of taxation at 30% in case of income from ordinary sources is on the net income i.e. receipts minus corresponding expenses like interest etc. before arriving at the taxable dividend. Therefore, it is not a general proposition that in every case the tax on dividend (at the rate of 15%) in the hands of the company ends up in a concession for persons in the 30% tax bracket because even if the dividend was to be taxed in their hands, their net liability may end up lower on account of deduction for expenses like interest etc".

11.14 **The Committee endorse the Dividend Distribution Tax regime and the flat rate of 15% proposed in the code.**

11.15 FICCI on this clause further suggested that :

"DDT should not be applicable to the dividend paid to foreign share holders as the foreign shareholder cannot claim it as credit against tax liability in its home country. The old system of taxation at the same percentage in the hands of shareholder and levying of withholding tax instead of DDT should be incorporated. Alternatively, a 'split' kind of system – DDT for domestic shareholders and withholding tax for foreign shareholders – can be thought of".

11.16 The Ministry on the said suggestion replied as under :

"The suggestion is not acceptable as it will not only complicate the tax structure but also make it difficult to implement for the dividend distributors as well as the tax administrators".

11.17 **The levy of additional income tax which effectively reduces the quantum of dividend to be declared by the domestic company directly hits the foreign investors as the said additional income tax does not qualify for the underlying tax credit in the investors home country primarily because DDT is paid by the dividend paying company instead of directly by the foreign shareholders. The credit for tax will be available only for the taxes which are paid in India by the shareholder himself. The Committee, therefore, recommend that a suitable amendment in the Bill be made to ensure that non-resident shareholders become entitled to tax credit for the additional income tax paid by the Indian domestic company.**

11.18 Institute of Chartered Accountants of India, Bombay Chartered Accountants Society, KPMG and Bengal Chamber of Commerce and Industry have suggested the following on this clause as under :

(i) SEZ units should not be subject to DDT on the same lines as applicable under the current tax regime.

(ii) Under Section 115-O(6) of the Act, an undertaking engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone was exempt from levy of dividend distribution tax. There is no similar exemption proposed in the DTC. Further, there is no justification for such withdrawal. It is suggested that this provision should be restored.

(iii) Under the current law, the SEZ Developers are specifically exempted from DDT. The SEZ Act, 2005 lays down these tax treatments. These are incorporated in the Act. Levy of DDT as proposed, is therefore an infringement of the overriding provisions of the SEZ Act as envisaged.

SEZs are infrastructure projects which require significant capital investments and usually have long gestation periods – therefore fund flow is meticulously planned for such projects.

Similarly, investors plan the return that they get from such large infrastructure projects. When DDT is suddenly introduced, the possible return to investors also gets negatively impacted. This could have the unintended consequence of impairing capital formation in the economy, particularly SEZs given the high growth of capital formation witnessed. Therefore, exemption from DDT should continue for SEZ Developers, especially in respect of existing notified SEZs.

(iv) Dividend distribution tax has been levied on SEZ developers in the DTC 2010 which would increase the tax burden. Since these are relatively high gestation projects it would make sense to review the levy of the dividend distribution tax.

11.19 The Ministry while submitting their comments on these suggestions stated as under :

DDT is a tax on the dividend distributed by companies to its shareholders. For administrative convenience, this tax is levied upon and collected from the companies even though the real income belongs to the shareholders. Therefore, there is no justification for non-levy of DDT on distribution of profits by SEZ developers being companies.

It may also be mentioned that vide the Finance Act, 2011, SEZ developers, being companies, have been brought under the ambit of DDT.

11.20 **While agreeing with the Ministry's submission that SEZ developers have already been brought under the domain of DDT through the Finance Act, 2011, the Committee would recommend suitable grandfathering proviso may be brought in for a smooth transition.**

11.21 Life Insurance Council while submitting their suggestions on this clause stated as under :

The dividends that are declared on policyholders' investments should not be subject to Dividend Distribution Tax ('DDT').

Alternatively, the DDT required to be paid by the company should be passed on to a life insurance company as against to the government.

Alternatively, the DDT paid by the dividend declaring company should be allowed to be adjusted against the income distribution tax payable by a life insurance company on approved equity oriented life insurance scheme.

The proposed scheme of DTC is to not to levy any tax on the Policyholder's account. The 2009 draft of DTC contained specific exemption to the company declaring dividend to an insurance company.

Under DTC 2010, dividend income on which dividend distribution tax has been paid by the company paying the dividend is not subject to tax in the hands of recipient. The dividend income received by a life insurance company on policyholders' investments would also suffer DDT. While such dividend income would not be taxed in the hands of life insurance company but the same would be charged to tax in the hands of policyholders' when received by him as part of policy money. Therefore, it is recommended to introduce specific provision that the dividends that are declared on policyholders' investments should not be subject to DDT.

11.22 Comments of the Ministry on the above said suggestion are as under :

The surplus in the policy holders account in the case of life insurance is not subject to tax. The major income stream in the policy holder account are from capital gain interest, dividend form a very negligible portion of the income. Administratively, it is not possible for a company to distribute dividend to segregate a class of shareholder and exempt them from DDT. In any case the surplus in the policy holders account in the case of equity oriented life insurance scheme is subject to tax only @ 5% at the time of distribution. This is exactly on par with taxation of equity oriented mutual funds. Therefore, there is no justification of any change in the scheme.

11.23 **The Committee are of the view that levy of Dividend Distribution Tax on policy holders investments would negatively impact the insurance industry and desire that as suggested by some stakeholders, the dividends declared on policy holders investment should not be subjected to DDT and the said clause needs to be reviewed accordingly.**

11.24 India Venture Capital Association and KPMG have suggested the following on this clause :

(i) DDT at the rate of 15% is payable by domestic companies and domestic companies have been defined to mean resident companies. Hence, foreign companies which are regarded as resident based on place of effective management being in India, would be liable to pay DDT on dividends declared. Accordingly, such resident foreign companies distributing returns to its offshore investors could be liable to DDT, which seems to be unintended and could discourage outbound investments from India. Accordingly the Section should be applicable to an Indian company only as against a domestic company.

Amend Section 109(1) as under:

109. (1) Every **Indian company** shall be liable to pay tax on any amount of dividend declared, distributed or paid (whether interim or otherwise) to its shareholders, whether out of current or accumulated profits.

(ii) Where foreign company is effectively managed in India, it would be regarded as resident in India. Therefore, it needs to be clarified that the provisions of DDT would not be applicable to such companies.

11.25 The Ministry have not submitted any comments on the above said suggestions.

11.26 **The Committee desire that the term domestic company needs to be amply clarified as to whether it is meant only for the Indian companies or for resident companies including resident based foreign companies also. The Committee would expect suitable amendment to be incorporated in this regard to obviate any ambiguity.**

CHAPTER - XII – TAX ON DISTRIBUTED INCOME

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME

Clause 110 – Tax on income distributed by mutual fund or life insurer.

12.1 Clause 110 of the Bill seeks to provide that every life insurer shall be liable to pay tax on any amount of income, computed in the manner prescribed, distributed or paid to the policy holders of an approved equity oriented life insurance scheme. Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

12.2 Clause 110 of the DTC Bill in detail is given as under :

110. (*1*) Every mutual fund shall be liable to pay tax on any amount of income distributed or paid to the unit holders of equity oriented fund.

(*2*) Every life insurer shall be liable to pay tax on any amount of income, computed in the manner prescribed, distributed or paid to the policy holders of an approved equity oriented life insurance scheme.

(*3*) The tax on the distributed income shall be charged at the rate specified in Paragraph C of the Second Schedule, on the amount referred to in sub-sections (*1*) and (*2*).

(*4*) The mutual fund or the life insurer or the person responsible for making payment of the distributed income on its behalf, as the case may be, shall be liable to pay tax to the credit of the Central Government within a period of fourteen days from the date of distribution or payment of such income, whichever is earlier.

(*5*) No deduction under any other provision of this Code shall be allowed to the mutual fund or, as the case may be, the life insurer in respect of the distributed income charged to tax or the tax thereon.

(*6*) The tax on distributed income so paid by the mutual fund or, as the case may be, the life insurer shall be treated as the final payment of tax in respect of income distributed or paid and no further credit shall be claimed by the mutual fund or the life insurer or by any other person in respect of the tax so paid.

(*7*) If the mutual fund or the life insurer or the person responsible for making payment of the distributed income on its behalf, as the case may be, does not pay the tax in accordance with the provisions of this section, then, it or he shall be deemed to be an assessee in default in respect of the tax payable by it or him and the provisions of this Code relating to the collection and recovery of tax shall apply.

(*8*) If the mutual fund or the life insurer or the person responsible for making payment of distributed income on its behalf, as the case may be, fails to pay the whole or any part of the tax on distributed income referred to in sub-section (*3*),

within the time allowed under sub-section (*4*), then it or he shall be liable to pay simple interest at the rate of one per cent for every month on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

(*9*) In this section —

(*a*) "equity oriented fund" means a fund where more than sixty-five per cent of total proceeds of such fund are invested by way of equity shares in domestic companies;

(*b*) "approved equity oriented life insurance scheme" means—

(*i*) a life insurance scheme where more than sixty-five per cent of the total *premia* received under such scheme are invested by way of equity shares in domestic companies; and

(*ii*) such scheme is approved by the Board in accordance with such guidelines as may be prescribed;

(*c*) the percentage of equity share holding of the mutual fund or the life insurance scheme, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

Clause 110(2)

12.3 As given above.

Existing provision in the Income Tax Act, 1961

12.4 The relevant provision in the Income Tax Act, 1961 dealing with this issue is given as under :

> **115R (1)** Notwithstanding anything contained in any other provisions of this Act and section 32 of the Unit Trust of India Act, 1963 (52 of 1963), [any amount of income distributed on or before the 31st day of March, 2002 by the Unit Trust of India to its unit holders] shall be chargeable to tax and the Unit Trust of India shall be liable to pay additional income-tax on such distributed income at the rate of [ten] per cent :
>
> **Provided** that nothing contained in this sub-section shall apply in respect of any income distributed to a unit holder of open-ended equity oriented funds in respect of any distribution made from such fund for a period of three years commencing from the 1st day of April, 1999.

12.5 The Life Insurance Council has suggested the following on this clause :

> "(i) In order to qualify as an approved Equity Oriented Life Insurance Schemes, approval by IRDA should be sufficient and separate requirement of CBDT approval should be done away with. Similarly, the Guidelines for approval of Equity Oriented Life Insurance Schemes

(EOLIS) should be prescribed by IRDA and not CBDT. Every product of a life insurance company has to receive IRDA approval prior to its launch. The requirement to obtain CBDT approval in addition to IRDA approval would be cumbersome as it can result in administrative inconvenience and prolonged time in launching every new product. Even under current tax regime, IRDA approval is deemed as sufficient for claiming any exemptions or deductions with respect to amounts received or paid under such products.

(ii) Income distribution tax should not be levied in cases where amounts are received under an EOLIS wherein the premium payable in any year during the policy term does not exceed 5%/10% of capital sum assured. This is recommended since levy in such cases would result in taxing the amount received under the life insurance policy which otherwise would not be subject to tax under section 59(3)(d) of DTC 2010 which provides as under.

(3) The amount of deduction referred to in clause (b) of sub-section (1) shall be the following, namely —

(d) the amount included in income under clause (y) of sub-section (2) of section 58 in respect of an insurance policy where—

(i) the premium paid or payable for any of the years during the term of the policy does not exceed five per cent. of the capital sum assured; and (ii) the amount is received only upon completion of original period of contract of the insurance".

12.6 In response to each of the above suggestions, the reply of the Ministry is as under:

"(i) Central Board of Direct taxes is the apex body for administration of the Code. Accordingly, clause 110(9) of the DTC, 2010 provides that the equity oriented life insurance scheme shall be approved by the Board in accordance with the prescribed guidelines. **While prescribing the guidelines of IRDA will also be taken into account.**

(ii) As per provisions of clause 110(2) every life insurer shall be liable to pay tax on any amount of income distributed or paid to the policy holders of an approved equity oriented life insurance scheme and income for this purpose shall be computed in the prescribed manner."

12.7 **With regard to levy of income distribution tax in the case where amounts are received under an Equity Oriented Life Insurance Scheme (EOLIS), the Committee desire that reasonable amount of monetary ceiling may be considered for inclusion in clause 110 (2) of the Bill with the intent to protect the interest of small investors.**

Sixth Schedule- Income not included in the total income

Item 19 of Sixth Schedule

12.8 Item 19 of Sixth Schedule provides as under :

"Any dividend declared, distributed or paid to a company or a non-resident, in respect of which dividend distribution tax has been paid under section 109".

12.9 **Existing provision in the Income Tax Act, 1961**

10 [(*34*) any income by way of dividends referred to in section 115-O.

12.10 The Federation of Indian Chambers of Commerce and Industries and Bombay Chartered Accountant's Society have suggested the following changes on this schedule :

(i) Sixth Schedule to the Bill contains the list of incomes not included in the total income. According to its Item No.19, any dividend declared, distributed or **paid to a company or a non-resident**, in respect of which dividend distribution tax has been paid under section 109, shall not be includible in the total income. This would mean that dividend received by a company or a non-resident would only be tax exempt, and not other shareholders. The rationale is not understandable. Dividend Distribution Tax is payable on the entire dividend distributed to all the shareholders. Why should it be so, resulting in double taxation in the hands of the individual shareholder, once, as DDT in the hands of the company, and again, as income in his hands. This seems to be inadvertent drafting error, as under residuary income only dividend income on which DDT has not been paid, has been indicated. The anomaly needs to be corrected to avoid confusion and litigation.

(ii) Item 19 of Sixth Schedule should be re-worded as follows :

"any dividend declared, distributed or paid ~~to a company or a non-resident,~~ in respect of which dividend distribution tax has been paid under section 109".

12.11 The Ministry in their written replies to the above said suggestions stated that **it will be considered.**

12.12 **The Committee desire that as agreed to by the Ministry suitable modifications regarding dividend declared, distributed or paid to a company or a non-resident may be made in the clause so as to avoid confusion.**

CHAPTER - XIII - BRANCH PROFITS TAX

CHARGE OF BRANCH PROFITS TAX

13.1 The Code proposes that every foreign company shall, in addition to income-tax payable, be liable to Branch Profits Tax (BPT) in respect of branch profits of a financial year. The branch profits tax shall be charged in respect of the branch profits of a financial year of every foreign company at 15% of Branch profit. The branch profits of the foreign company shall be the income attributable, directly or indirectly, to the permanent establishment or an immovable property situated in India. As of now, foreign companies are taxed at the rate of 42.2% (inclusive of surcharge and cess) while domestic companies are taxed at the rate of 33.2% (inclusive of surcharge and cess) plus a dividend distribution tax at the rate of 16.6% when they distribute dividend from accumulated profits. Under the DTC, It is proposed to equate the tax rate of foreign companies with that of domestic companies by prescribing the rate at 30% and levying a branch profit tax (in lieu of dividend distribution tax) at the rate of 15%.

Clause 111 of the Code deals with the charge of branch profit tax. The Clause reads as under:

> 111. (1) Subject to the provisions of this Code, every foreign company shall, in addition to income-tax payable, be liable to branch profits tax in respect of branch profits of a financial year.
>
> (2) The branch profits tax shall be charged in respect of the branch profits of a financial year of every foreign company at the rate specified in Paragraph D of the Second Schedule.
>
> (3) The branch profits referred to in sub-section (1) shall be the income attributable, directly or indirectly, to the permanent establishment or an immovable property situated in India, included in the total income of the foreign company for the financial year, as reduced by the amount of income-tax payable on such attributable income.
>
> (4) The liability to branch profits tax shall be discharged by payment of pre-paid taxes in accordance with the provisions of this Code as if the branch profits tax was income-tax.
>
> (5) The branch profits tax charged under this section shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code.

13.2 This provision does not exist in the existing Income Tax Act 1961.

13.3 FICCI has suggested the following changes in the Code in their memorandum submitted to the Committee:

a. The computation of BPT should be amended to provide for levy of BPT only on remittances by the Permanent Establishment (PE) to its parent instead of levy of BPT on the income attributable to the PE. Accordingly, the words 'branch profits' should be replaced by the words 'on profits repatriated out of India'. Most countries levy BPT on profits repatriated outside the country.

b. Also sec 111(3) refers to levy of BPT on income. The expression 'income' is defined in sec 314(120) largely as gross receipts. There is therefore an apprehension that the levy of BPT would be on gross receipts. Hence, this provision should be suitably amended to provide that the levy of BPT is on profits and not on gross receipts.

c. It should be clarified that BPT is in the nature of income tax to enable the foreign companies to claim credit in their home jurisdiction for BPT paid in India.

13.4 ASSOCHAM has suggested the following changes in their memorandum submitted to the Committee:

d. The term 'branch' should be defined on the lines of the foreign exchange Management Act. Applicability of branch profit tax should be restricted to a foreign company which establishes a branch in India and which has registered under part XI of the Companies Act 1956.

e. Currently, the provisions of the DTC are not clear on whether this tax is to be levied on each branch / PE in India of a foreign company separately, or whether it is to be levied on the consolidated profits of all the branches/ PE in India. It would thus be desirable to clarify that this tax should be levied on a consolidated basis and not on a standalone basis.

13.5 CII has suggested the following changes in their memorandum submitted to the Committee:

f. BPT should not be levied on PE of entity, which are subject to presumptive taxation. In the alternative, presumed income should be the basis for levy of BPT.

13.6 In their reply, the Ministry of Finance (Department of Revenue) have submitted as under:

a. BPT is not a remittance tax. Also, a company is by definition an entity which has perpetual succession, whereas a Permanent Establishment (PE) has a limited period of existence in the country. Hence, the BPT has to be levied at the first point when income is earned. Administratively, also, this is the most efficient way to compute and collect the tax.

b. The income included in the total income is the income which is computed in accordance with provisions of the Code and would therefore be computed after deductions available in the Code. Hence, the liability for BPT would be on this income only.

c. The BPT is an additional income tax and therefore it is actually in the nature of income-tax only. The credit would be available based on relevant domestic law of the country of residence of the foreign company and the DTAA of India with that country.

d. The concept of a branch for direct tax purposes is aligned with that of a PE as contemplated in various DTAAs entered into by India with other countries.

e. Since total income is that of an assessee, the income of the PEs would get clubbed. Thereafter income payable would be reduced and branch profits worked out for levy of BPT.

f. There is no justification to exempt presumptive income because it is only one mode of computation but does not alter the character of the income of the PE.

13.7 **While welcoming in principle the proposal in the Code for levy of Branch Profit Tax on foreign companies on their income attributable directly or indirectly to their permanent establishment or an immovable property situated in India, the Committee would recommend that it may be suitably clarified that the concept of a branch and Permanent Establishment (PE) for direct tax purposes would remain aligned with bilateral tax treaties/agreements. This would not put foreign entities to dis-advantage in availing tax credit as applicable under their domestic laws.**

13.8 **The Committee would also expect that any ambiguity in the Clause obfuscating the fulfillment of the objective of introducing this new levy particularly to bring in equity between domestic and foreign companies is removed.**

CHAPTER – XIV – WEALTH-TAX

CHARGE OF WEALTH-TAX

14.1 Wealth tax is an annual tax like income tax. It is another type of direct tax by which tax is imposed on individuals coming within its purview. Pensioners, retired persons or senior citizens have not been accorded any special benefits under this Act.

14.2 Wealth tax is charged for every assessment year in respect of net wealth of corresponding valuation date, inter alia, on every individual Hindu Undivided Family (HUF) and company at the rate of one per cent (1%) of the amount by which net wealth exceeds Rs. 15 lakhs. "Valuation Date" is 31st March immediately preceding the assessment year [S.2(a)], Assessment year, as under the Income-tax Act, means a period of 12 months commencing from 1st day of April every year falling immediately after the valuation date [S.2(d)]. Net wealth means taxable wealth. It means the amount by which the aggregate value of all assets (excluding exempted assets) belonging to the assessee on the valuation date including assets required to be included in the net wealth, is in excess of the aggregate value of all debts owed by the assessee on the valuation date which have been incurred in relation to the taxable assets.

14.3 Wealth tax is an anti- abuse measure in the integrated tax system. It ensures reporting of significant assets held by a tax payer. It is proposed that Wealth Tax will be levied broadly on the same lines as provided in the Wealth Tax Act, 1957. The DTC follows a similar approach of taxation of wealth as followed in the Wealth Tax Act, 1957. Accordingly, it is proposed in the DTC that specified "unproductive assets" will be subject to the wealth tax. However, it will be payable by all taxpayers except non-profit organizations. The threshold limit and rate of tax have been suitably calibrated in the context of overall tax rates to provide an exemption limit of Rs. 1 crore and tax @1% on any amount in excess of this limit.

14.4 On the issue of the reduction of the exemption limit, the Ministry in their written replies stated that the exemption limit of Rs. 1 crore has been provided so as to take care of persons in the lower income and net worth groups.

14.5 During evidence the Committee further sought to know about the reasons for reduction of the exemption limit from proposed 50 crore to 1 crore for wealth tax. In their reply to the said query, the Ministry in their written information stated as under :

> **"**When the threshold limit of Rs. 50 crore for applicability of wealth tax was proposed, the tax was proposed to be levied on all assets including financial assets and the tax rate proposed was @ 0.25%. Wealth tax is proposed as an anti-abuse measure in an integrated tax system. It ensures the reporting of significant assets held by a tax payer. The tax will be levied only on specified assets. It does not include financial assets like shares and securities. Moreover one house, a plot of land up to 500 sq. mts., commercial property and rented properties are exempted from tax. As a result of this, a large number of assets are left out of wealth tax. It was in this context that the threshold limit was reduced from Rs. 50 crore to Rs. 1 crore. Under the existing law, wealth tax is levied @ 1 % above threshold of Rs. 30 lakhs. Therefore, relief by way of increase in threshold from Rs. 30 lakhs to 1 crore has already been provided."

14.6 **With a view to making the tax regime progressive and to increase the wealth tax revenue, the Committee suggest that wealth tax should be levied at the rates as recommended in PART-I of the Report.**

Proposed clauses in the DTC Bill, 2010

Clause 112 – Tax on net wealth

14.7 Clause 112 reads as under :

112. (*1*) Subject to the provisions of this Code, every person, other than a non-profit organisation, shall be liable to pay wealth-tax on the net wealth on the valuation date of a financial year.

(*2*) The wealth-tax shall be charged in respect of the net wealth referred to in subsection(*1*), on the valuation date of a financial year at the rate specified in Paragraph E of the Second Schedule in the manner provided therein.

(*3*) The liability to wealth-tax shall be discharged by payment of pre-paid taxes in accordance with the provisions of this Code.

(*4*) The wealth-tax charged under this section shall be collected after allowing credit or pre-paid taxes, if any, in accordance with the provisions of this Code.

Existing provision in the Wealth-Tax Act

14.8 Every individual, Hindu Undivided Family and company were liable to wealth-tax as per section 3(1) of the Wealth-tax Act.

14.9 Indian Chamber of Commerce, Calcutta, Institute of Chartered Accountants of India, Bombay Chartered Accountants' Society and Federation of Indian Chamber of Commerce and Industry through their written memorandum submitted to the Committee suggested as follows :

(i) At present schedule III of Wealth Tax Act provides the method to determine the value of assets. Under DTC, such valuation rules will be notified by CBDT. It is suggested that similar schedule III (as existing) may be made part of DTC itself.

(ii) Under the Wealth-tax Act, property held by a person under trust or other legal obligation for any public purpose of charitable or religious nature was not included in the net wealth. In the DTC, only NPOs are not subject to wealth-tax. However, NPOs do not include religious trusts and therefore, religious trusts become liable for wealth-tax. It is suggested that wealth tax should not be levied on religious trusts.

(iii) As per clause 314(169), following organizations do not qualify to be a NPO-

(a) organisation established for the benefit of any particular caste or religious community;

(b) organization which provides any benefit for the members of any particular caste or religious community;

(c) organization established for the benefit of any of its member;

(d) Organization not actually carrying on the charitable activities during the financial year.
The organizations of the type listed above should be specifically exempted from the provisions of wealth tax.

(iv) Under the existing Wealth Tax Act, wealth tax is levied only on individuals / HUFs and companies. Firms / LLPs are outside its purview. It is suggested that the same position should continue under the DTC regime.

14.10 In response to the above said suggestions, the reply of the Ministry on each suggestion is given as under :

(i) Taxation law should be such that it is not required to be amended often. The rules for valuation may be needed to be changed often. Therefore they shall be notified by the CBDT.

(ii) & (iii) A public religious trust would be covered in the definition of Non Profit Organisations (NPOs) and therefore exempt from wealth-tax as clause 112 (1) provides that every person other than a NPO shall be liable to pay wealth tax. .

Schedule 7, para 39 also exempts income of a public religious trust. Other religious trusts set up for benefit of a particular religion and not held for public purpose, do not merit such exemption.

Similarly, the trusts set up for a particular caste or only for its members or not actually carrying on any charitable activity are like any other entity and, accordingly, do not deserve any special dispensation as these are not existing for public purpose rather with a private motive.

(iv) Holders of substantial economic resources in form of accumulated wealth should not desist from paying a small sum as wealth-tax. Firms and LLPs cannot be categorized differently from companies in this respect.

14.11 **The Committee note that the clause provides for levy of wealth tax on all assessees except non-profit organisation and definition of NPO expressly exclude trusts/institutions established for a particular caste or religious community thereby making them liable to Wealth Tax which are otherwise exempt under the present Wealth Tax Act, 1951 for the last five decades. The Committee, therefore, recommend that wealth tax should not**

be levied on particularly religious trusts which are doing significant charitable work, as bringing such trusts under wealth tax would affect public welfare activities undertaken by them.

Clause 112 (4)

14.12 Clause 112 (4) reads as under :

112(4) The wealth-tax charged under this section shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code.

Existing provision in the Wealth-Tax Act

14.13 There is no such existing provision in the Wealth Tax Act.

14.14 On this clause, Bombay Chartered Accountants' Society in their written memorandum suggested as under :

> "DTC proposes to levy wealth tax on deposit in a bank located outside India, interest in a foreign trust and any equity or preference shares held by a resident in a controlled foreign company, which were hitherto not liable to WT. Therefore, equity demands that wealth tax paid on such assets in foreign country should also be available as foreign tax credit".

14.15 On this suggestion, the Ministry in their written replies stated as under :

> "Bank deposits located outside India, in case of an individual or a Hindu undivided family, or any interest in a foreign trust or any other body located outside India (whether incorporated or not) other than a foreign company, have been included in the list of items subjected to wealth-tax as a reporting requirement and in order to prevent tax evasion.
> Foreign tax credit in respect of wealth tax paid outside India is available under some of the DTAAs signed by India. The incidence of wealth tax is nominal".

14.16 **The Committee are in agreement with the Ministry that the incidence of levy of wealth tax in respect of the deposit in a bank outside India is nominal and Foreign Tax Credit thereto is available under some of the DTAAs signed by India.**

Clause 113 – Computation of net wealth

14.17 The clause relates to computation of net wealth. Wealth-tax is to be charged on the net wealth on the valuation date. The value of assets and

liabilities is to be taken on the valuation date i.e. market value is to be charged to wealth tax.

14.18 On this clause, Institute of Chartered Accountants of India (ICAI) in their written suggestions stated as follows :

> "Basic purpose of wealth-tax being to extract information rather than raising revenue, it is suggested that the tax may be charged on the net wealth valued at cost price rather than market price. However, if the same is not possible the assessee should be required to disclose the cost of the specified asset along with the market value".

14.19 On this suggestion, the reply of the Ministry is given as under :

> "The case for levy of wealth tax is based on several factors and purpose is not just collection of information. Wealth-tax was introduced as a measure against accumulation of wealth in certain hands. This was levied to ensure that resources are not concentrated in a few hands rather shared with the masses. Besides, cost price of the assets is not a correct indicator of actual worth of the person.
>
> As regards disclosure of cost-price along with market value, the suggestion would be examined at the time of prescribing format of tax returns".

14.20 **The Committee endorse the view of the Ministry that for computation of net wealth, cost price of the assets is not a correct indicator of actual worth of the person. The Committee would expect that as agreed with the suggestion regarding disclosing cost price of the specified assets alongwith the market value by the assessee, appropriate modification to this effect be made and suitably incorporated in the format of tax returns.**

Clause 113 (1)

14.21 Clause 113 (1) reads as under :

113. (1) The net wealth of a person referred to in sub-sections (1) and (2) of section 112 shall be the amount computed in accordance with the formula - A-B
Where

A = the aggregate of the value on the valuation date, of all the specified assets, wherever located, belonging to the person referred to in this section, computed in accordance with the provisions of sub-section (5);

B = the aggregate of the value on the valuation date, of all the debts, owed by the person, which have been incurred in relation to the specified assets.

14.22 Suggestion as received from Institute of Chartered Accountants of India (ICAI) on this clause is as under :

> "Presently the Board's circular 663 dt.28.09.93 clarifies that wealth-tax payable shall not be taken as a debt incurred in relation to assets. Thus wealth-tax payable cannot be included under Item B in the formula.
>
> For clarity purpose, the item 'B' should be reworded to exclude specifically "wealth tax" from "debts owed by the person, which have been incurred in relation to the specified assets".

14.23 In their reply to the above said suggestion, the Ministry in their written statement stated that the said suggestion **will be considered**.

14.24 The Committee would expect the Ministry to suitably modify item 'B' as suggested in the formula for computing net wealth to exclude specifically 'wealth tax' from 'debts owned by the person which have been incurred in relation to the specified assets' for the purpose of clarity.

Clause 113 (2), 113 (3)(c) and 314(284)

14.25 Clause 113 (2) reads as under :

113 (2) The specified assets referred to in sub-section (*1*) shall be the following, namely :—

(*a*) any building or land appurtenant thereto (hereinafter referred to as "house"), used for any purpose;

(*b*) any farm house situated within twenty-five kilometers from local limits of any municipality or municipal corporation (by whatever name called) or a Cantonment Board;

(*c*) any urban land;

(*d*) motor car, yacht, boat, helicopter and aircraft other than those used by the assessee in the business of running them on hire or as stock-in-trade;

(*e*) jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, other than those used by the assessee as stock-in -trade;

(*f*) archaeological collections, drawings, paintings, sculptures or any other work of art;

(*g*) watch having value in excess of fifty thousand rupees;

(*h*) cash in hand, in excess of two lakh rupees, of individuals and Hindu undivided families;

(*i*) deposit in a bank located outside India, in case of individuals and Hindu undivided families, and in the case of other persons any such deposit not recorded in the books of account;

(*j*) any interest in a foreign trust or any other body located outside India (whether incorporated or not) other than a foreign company; and

(*k*) any equity or preference shares held by a resident in a controlled foreign company, as referred to in the Twentieth Schedule.

Clause 113 (3)(c)

14.26 Clause 113 (3) (c) reads as under :

The specified assets referred to in sub-section (*2*) shall not include the following, namely:—

(*c*) the value of the assets located outside India, if the person is a non resident;

Clause 314 (284)

14.27 Clause 314 (284) describing the meaning of 'urban area' is also related to the clause 113.

Clause 314 (284) reads as under :

314. In this Code, unless the context otherwise requires —

(*284*) "urban area" means—

(a) an area within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the financial year; or

(b) an area within such distance from the local limits of any municipality or cantonment board referred to in sub-clause (*a*), as the Central Government may having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification.

14.28 **Existing provision in the Wealth-Tax Act**

2(ea) "assets", means - (i) any building or land appurtenant thereto (hereinafter referred to as "house"), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipalilty Corporation or by any other name) or a Cantonment Board, but does not include –

(1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh rupees;

(2) any house for residential or commercial purposes which forms part of stock-in- trade;

(3) any house which the assessee may occupy for the purposes of any business or profession carried on by him;

(4) any residential property that has been let-out for a minimum period of three hundred days in the previous year;

(5) any property in the nature of commercial establishments or complexes; (ii) motor cars (other than those used by the assessee in the business of running them on hire or as stock-in-trade); (iii) jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals :

Provided that where any of the said assets is used by the assessee as stock-in-trade, such assets shall be deemed as excluded from the assets specified in this subclause; (iv) yachts, boats and aircrafts (other than those used by the assessee for commercial purposes); (v) urban land; (vi) cash in hand, in excess of fifty thousand rupees, of individuals and Hindu undivided families and in the case of other persons any amount not recorded in the books of account.

Explanation 1 : For the purposes of this clause, - (a) "jewellery" includes - (i) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semiprecious stones, and whether or not worked or sewn into any wearing apparel; (ii) precious or semiprecious stones, whether or not set in any furniture, utensils or other article or worked or sewn into any wearing apparel; (b) "urban land" means land situate -

(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date; or

(ii) in any area within such distance, not being more than eight kilometers from the local limits of any municipality or cantonment board referred to in subclause (i), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette, but does not include land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or the land occupied by any building which has been constructed with the approval of the appropriate authority or any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him or any land held by the assessee as stock-in-trade for a period of five years from the date of its acquisition by him.

14.29 On this clause, ICAI suggested as follows :

Assets like urban land, archaeological collections, drawings, paintings, sculptures or any other work of art, watches of value exceeding 50000 are proposed to be charged to wealth-tax even if they are held as stock-in trade.

However, for jewellery, bullion, furniture, utensils, motor car, yacht, boat, helicopter and aircraft such exclusion has been provided for. The exclusion for stock-in-trade items should be provided for all assets charged to wealth-tax.

14.30 The Ministry in their written replies to the above said suggestions stated that the suggestions will be considered.

14.31 **The Committee note that in the proposed DTC Bill, certain items are to be charged to wealth tax even if they are held as stock-in-trade whereas exclusion has been provided for other items. In view of this and as agreed to by the Ministry, the Committee desire that all assets charged to wealth tax should be provided exclusion for stock-in-trade items and necessary modifications be made in the relevant clause accordingly.**

14.32 On this clause, FICCI, Bombay Chartered Accountants Society and Indian Chamber of Commerce, Calcutta in their written memorandum suggested as follows :

> Urban land [clause 113(2)(c)] should be defined in clause 314 to avoid any litigation. Also exemptions provided in the present Act should also be provided for.

14.33 Indian Chamber of Commerce, Calcutta has also suggested that specific provision may be made in DTC that no wealth tax will be levied on urban land which is used for industrial purposes.

14.34 The Ministry in their written replies to the above said suggestions stated that these suggestions will be considered.

14.35 **As suggested and agreed to by the Ministry, the Committee would expect exemptions provided in the present Act should continue in the new DTC Bill and recommend to make suitable modifications accordingly.**

14.36 In their written memorandum submitted to the Committee, ASSOCHAM on this clause suggested as follows :

> "As per section 6 of the WT Act, foreign citizens qualifying to be resident and ordinarily resident would not be charged for WT for assets located outside India. DTC does not carry such exemption causing hardship to foreign citizens coming to India and becoming a resident of India. Therefore, in the case of Foreign citizen becoming resident in India, the net assets located outside India should not be charged to wealth tax".

14.37 One more suggestion as received from an expert on this clause is as under :

> "Sec 113(3) deals with specified assets which shall not be included and clause (c) states "the value of the assets located outside India, if the person is a non-resident." Thus foreign assets are excluded only in case of non residents. The category of 'non-citizen' is not mentioned in the exception clause. In this sense there is an unintended tax on foreign assets of foreign citizens. This is likely to affect numerous foreign citizens who are employed by both Indian companies as also foreign companies who have made substantial investments in India. It is also likely to affect foreign direct investments by persons of Indian origin who are NRIs as well. This unintended effect of the proposed piece of legislation needs to be corrected. In this connection the following amendment is suggested:-
>
> Section 113(3)(c) to read as follows :
>
> (c) the value of assets located outside India, if the person is a non resident or is not a citizen of India".

14.38 The Ministry in their replies to the said suggestions stated that it will be considered.

14.39 **The Committee find that as per existing Wealth Tax Act, foreign citizens qualifying to be resident and ordinarily resident would not be charged for wealth tax for assets located outside India. The Committee feel that as suggested and agreed to by the Ministry, in the case of foreign citizens becoming resident in India, the net assets located outside India should not be charged to wealth tax as this trend would hit foreign citizens in employment with both Indian and foreign companies which have invested in India. The Committee, therefore, desire that necessary amendments be made to sub-clause (3)(c) of Clause 113.**

14.40 ASSOCHAM and Bombay Chamber of Commerce and Industry in their written memorandum suggested as follows :

> "Shares held by a resident in CFC are chargeable to WT. There is no rationale for the same when shares held in Indian company are not subject to WT. These provisions should be deleted. Also it should be clarified that wealth tax would not be levied multiple times in case of multi-tier CFCs.

14.41 The Ministry in their written replies to the said suggestion stated as follows:

"This provision has been included as a reporting system and as a measure to check tax evasion. Hence it is a measure to elicit information regarding interest in a CFC. Further, the income of CFC being passive in nature, the share in CFC can be categorized as an unproductive investment, and therefore, chargeable to WT. However, for a company to be categorized as CFC, there are strict provisions. As far as issue of multi-level CFCs is concerned, the method of valuation of interest in such CFCs shall be prescribed through rules.

14.42 **The Committee observes that general scheme underlying the levy of wealth tax is that it is levied on unproductive investment. The equity or preference shares in a CFC cannot be regarded as unproductive as these assets are earning income on which income tax is levied. So, the Committee recommend that shares held in a CFC should be excluded from the scope of wealth tax.**

Clause 114 – Net wealth to include certain assets

14.43 The clause provides for situations where certain specified assets shall be deemed to be belonging to a person and included in his net wealth.

14.44 Clause 114 reads as under :

114. (*1*) The specified assets referred to in sub-section (*2*) of section 113 shall be deemed to be belonging to the person, being an individual, and included in computing his net wealth if such assets, as on the valuation date, are held (whether in the form they were transferred or otherwise)—

(*a*) by the spouse of such individual to whom such asset has been transferred by him, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart;

(*b*) by a minor child, not being a person with disability or person with severe disability, of such individual;
(*c*) by a person to whom such asset has been transferred by the individual, directly or indirectly, otherwise than for adequate consideration for the immediate or deferred benefit of the individual or his spouse;

(*d*) by a trust to whom such asset has been transferred by the individual, if the transfer is revocable during the life time of the beneficiary of the trust;

(*e*) by a person, not being a trust, to whom such asset has been transferred by the individual, if the transfer is revocable during the life time of the person; and

(*f*) by a Hindu undivided family by way of any converted property.

(*2*) The provisions of sub-section (*1*) shall not apply in respect of such specified asset as has been acquired by the minor child out of his income referred to in clause (*b*) of subsection (*1*) of section 9 and which are held by him on the valuation date.

(*3*) In this section,—

(*a*) the asset referred to in clause (*b*) of sub-section (*1*) shall be included in the net wealth of—

(*i*) the parent who is the guardian of the minor child; or

(*ii*) the parent whose net wealth (excluding the assets referred to in that clause) is higher, if both the parents are guardians of the child;

(*b*) a transfer shall be deemed to be revocable if—

(*i*) it contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the income or asset to the transferor; or

(*ii*) it, in any way, gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the income or asset;

(*c*) the person shall, notwithstanding anything in this Code or in any other law for the time being in force, be deemed to be the owner of a building or part thereof, if he is a member of a co-operative society, company or other association of persons and the building or part thereof is allotted or leased to him under a house building scheme of the society, company or association, as the case may be;

(*d*) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate; and

(*e*) the value of any assets transferred under an irrevocable transfer shall be liable to be included in computing the net wealth of the transferor in the year in which the power to revoke vests in him.

14.45 **Existing provision in the Wealth-Tax Act**

4(1), 3rd proviso.

Provided also that where the assets held by a minor child are to be included in computing the net wealth of an individual, such assets shall be included, - (a) where the marriage of his parents subsists, in the net wealth of that parent whose net wealth (excluding the assets of the minor child so includible under this subsection) is greater; or

(b) where the marriage of his parents does not subsist, in the net wealth of that parent who maintains the minor child in the previous year as defined in section 3 of the Income-tax Act, and where any such assets are once included in the net wealth of either parent, any such assets shall not be included in the net wealth of

the other parent in any succeeding year unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.

14.46 Bombay Chartered Accountants' Society on this clause suggested as follows :

> "In a situation covered under clause (ii), where both parents are guardian of the child, the clause should provide that where any wealth is once included in the total wealth of either parent, then in the succeeding year also the same should be included in the wealth of the same parent.
> This provision would be in line with the existing provision contained in the third proviso to sec 4(1) of the Wealth Tax Act, 1957".

14.47 While accepting the above said suggestion the Ministry in their written replies stated as follows :

> This **will be considered** in line with the provisions of clause 9(6) of the DTC, 2010 relating to inclusion of income of a minor in the hands of his parents.

14.48 **The Committee desire that as agreed to by the Ministry the suggestion regarding any wealth once included in the total wealth of either parent in case where both are guardians, the same should be included in the wealth of the same parent in the succeeding years. Suitable amendments may be incorporated in the Bill so as to be in line with existing provisions contained in the Wealth Tax Act, 1957.**

CHAPTER – XV - PREVENTION OF ABUSE OF THE CODE
SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

A. TRANSFER PRICING REGULATIONS

Determination of Arm's Length Price

15.1 In the proposed Direct Tax Code, **'**the arm's length price' in relation to an international transaction shall be determined in accordance with the most appropriate method. The price at which the international transaction has actually been undertaken shall be deemed to be the 'arm's length price', if the variation between the arithmetic mean of the arm's length price determined by the most appropriate method and the price at which the international transaction has actually been undertaken does not exceed five per cent of the latter. The arithmetical mean is a measure of central tendency of a series, and gives an idea of the concentration of the observation of the series about the central part of the distributions. The rules relating to transfer pricing methods, selection of the most appropriate method and the application of the most appropriate method are yet to be prescribed.

15.2 Clause 117 of the Code deals with Determination of arm's length price. The Clause reads as under:

> (1) The arm's length price in relation to an international transaction shall be determined in accordance with any of the methods as may be prescribed, being the most appropriate method.
>
> (2) The most appropriate method referred to in sub-section (1) shall be determined having regard to the nature of transaction, class of transaction, class of associated enterprise or functions performed by such enterprises or such other relevant factors as may be prescribed.
>
> (3) The most appropriate method determined under sub-section (2) shall be applied for determination of arm's length price in such manner as may be prescribed.
>
> (4) The arm's length price shall be—
>
> (*a*) the price determined by the most appropriate method, if only one price is determined by the method; or

(*b*) the arithmetical mean of the prices determined by the most appropriate method, if more than one price is determined by the method.

(5) The price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price if the variation between the arm's length price determined under sub-section (4) and the price at which the international transaction has actually been undertaken does not exceed five per cent of the latter.

(6) The income of an associated enterprise shall not be recomputed by reason of determination of arm's length price in the case of the other associated enterprise.

(7) No deduction under Sub-chapter-IV of Chapter III shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this section.

(8) The determination of arm's length price shall be subject to safe harbour rules, as may be prescribed in this behalf.

Associated Enterprises (AEs)

15.3 Clause 124(5) of the DTC defines the circumstances under which two enterprises shall become associated enterprises and consequently, all the transactions between them shall be treated as international transactions. The threshold limits for two enterprises to be considered to be Associated Enterprises have been proposed to be revised. The definition of AEs has been considerably widened by inserting new criteria. The same will result in more taxpayers coming within the net of transfer pricing regulations

15.4 Clause 124 (5) defines the term associated enterprises as follows:

In this Chapter,—

(5) "associated enterprise" in relation to another enterprise, means an enterprise—

(*a*) which participates, directly or indirectly, or through one or more inter-mediaries, in the management or control or capital of the other enterprise; or

(*b*) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise, and for the purposes of sub-clauses (*a*) and (*b*) above, two enterprises, shall be deemed to be

associated enterprises at any time during the financial year, if they are associated with each other by virtue of —

(*i*) one enterprise holding, directly or indirectly, shares carrying twenty-six per cent or more of the voting power in the other enterprise;

(*ii*) any person or enterprise holding, directly or indirectly, shares carrying twenty-six per cent or more of the voting power in each of such enterprises;

(*iii*) a loan advanced by one enterprise to the other enterprise and the loan constitutes fifty-one per cent or more of the book value of the total assets of the other enterprise;

(*iv*) one enterprise guarantees ten per cent or more of the total borrowings of the other enterprise;

(*v*) more than one-half of the board of directors, or members, of the governing board, or one or more executive directors, or executive members, of the governing board of one enterprise, being appointed by the other enterprise;

(*vi*) more than one-half of the directors, or members, of the governing board, or one or more of the executive directors, or executive members, of the governing board, of each of the two enterprises, being appointed by the same person or persons;

(*vii*) the manufacture, or processing, of any goods or articles of, or carrying on the business by, one enterprise being wholly dependent on the use of know-how, patents, copyrights, trademarks, brands, licences, franchises, or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights;

(*viii*) ninety per cent or more of the raw materials and consumables required for the manufacture, or processing, of goods or articles carried out by one enterprise, being supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise;

(*ix*) the goods or articles manufactured, or processed, by one enterprise, being sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise;

(*x*) the services provided, directly or indirectly, by one enterprise to another enterprise or to persons specified by the other enterprise, and the amount payable and the other conditions relating thereto are influenced by such other enterprise;

(*xi*) one enterprise being controlled by an individual, and the other enterprise being also controlled by such individual or his relative, or jointly by such individual and his relative;

(*xii*) one enterprise being controlled by a Hindu undivided family, and the other enterprise being also controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative;

(*xiii*) one enterprise holding ten per cent, or more, interest in another enterprise being an unincorporated body;

(*xiv*) any specific or distinct location of either of the enterprises as may be prescribed; or

(*xv*) any other relationship of mutual interest, existing between the two enterprises, as may be prescribed;

15.5 **The existing provisions in the Income Tax Act, 1961 relating to arm's length price is as follows:**

92C. (1) The arm's length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely :

(a) comparable uncontrolled price method;

(b) resale price method;

(c) cost plus method;

(d) profit split method;

(e) transactional net margin method;

(f) such other method as may be prescribed by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed:

Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices:

Provided further that if the variation between the arm's length price so determined and price at which the international transaction has actually been undertaken does not exceed five per cent of the latter, the price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price.

(3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that—

(a) the price charged or paid in an international transaction has not been determined in accordance with sub-sections (1) and (2); or

(b) any information and document relating to an international transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or

(c) the information or data used in computation of the arm's length price is not reliable or correct; or

(d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D, the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined:

Provided that no deduction under section 10A or section 10AA or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section :

Provided further that where the total income of an associated enterprise is computed under this sub-section on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XVIIB, the income of the other associated enterprise shall not be recomputed by

reason of such determination of arm's length price in the case of the first mentioned enterprise.

Power of Board to make safe harbour rules.

92CB. (1) The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules.

(2) The Board may, for the purposes of sub-section (1), make rules for safe harbour.

Explanation.—For the purposes of this section, "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

15.6 Associated Enterprise has been defined in the Income Tax Act, 1961 as follows :

92A. (1) For the purposes of this section and sections 92, 92B, 92C, 92D, 92E and 92F, "associated enterprise", in relation to another enterprise, means an enterprise —

(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

(2) For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—

(a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or

(b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or

(c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or

(d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or

(e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or

(f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or

(g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of knowhow, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

(h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

(i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

(j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

(k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or

(l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or

(m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

15.7 CII has suggested the following changes in its memorandum submitted to the Committee:

15.8 It has been provided that the price at which the international transaction has been undertaken shall be deemed to be the Arms Length Price (ALP) if the variation between the arithmetic mean of the ALP determined by the most appropriate method and the price at which the international transaction does not exceed 5% of the latter. It may be appreciated that the arithmetic mean may not be the most appropriate method. It is recommended that a range concept be introduced to provide more sanctity to the comparison being made.

15.9 ICWAI has suggested the following changes in its memorandum submitted to the Committee:

> It is proposed that sec 117(1) may be redrafted as :
>
> "The arm's length price in relation to an international transaction shall be determined in accordance with any of the <u>following</u> methods, namely:-
>
> a) Comparable uncontrolled price method (CUP)
> b) Resale price method (RPM)
>
> c) Cost plus method (CPM)
>
> d) Profit split method (PSM)
>
> e) Transactional net margin method (TNMM)
> f) Such other method as may be prescribed by the Board."

15.10 It is further suggested that the "cost plus method", should be strictly followed in majority of the assessment proceedings, for the following reasons:

> i) the information regarding elements of cost are available from the books of account;
>
> ii) this is not based on subjective judgement;
>
> iii) fair determination of cost is possible;
>
> iv) being the most reliable method.

15.11 Bombay Chartered Accountants Society has suggested the following changes in its memorandum submitted to the Committee:

> To avoid arbitrariness, it is suggested that, similar to section 124(5)(viii) dealing with raw material purchases, a threshold of ninety percent of total services provided by the service provider should be kept in section

124(5)(x) in order to have a definite threshold in determination of whether the enterprises are associated or not.

15.12 Indian Banks' Association has suggested the following changes in its memorandum submitted to the Committee:

Clarity is required on what is sought to be subjected to the transfer pricing provisions by virtue of the provisions contained in 124(5)(xiv). If merely transacting routinely with parties in a specified location is sought to make the transacting parties deemed to be associated, then these provisions should be deleted.

There may be practical difficulties, inter-alia, in obtaining details about the transactions of such enterprises in the specified location for the purpose of transfer pricing (filing in the current form 3CEB, responding to notices etc.) KPMG in their memorandum have suggested the following:

We anticipate hardships for the taxpayer because it seeks to to open to scrutiny pure commercial transactions between unrelated parties wherein there is no real motive or ability for a taxpayer to shift profits overseas effectively as the beneficiary in this case would be an entity that has no nexus with the taxpayer. The Government should clarify its intent in introducing the provision to treat enterprises from specific or distinct location as AE's. The Government should further prescribe a monetary threshold for granting exemption from the application of this criterion so as to avoid small and economically insignificant transactions falling in the TP net.

15.13 The Ministry's reply to the above suggestions is as follows:

i) The arithmetic mean concept has worked well being simple to understand and easy to administer. The concept is being continuously evaluated. This is evident from the Finance Act, 2011, wherein it has been provided that the uniform 5% deviation principle would not apply anymore. Rather the Central Government would notify the percentage of variation for different kinds of transactions. Similar modifications will be considered in the Code.

ii) The most appropriate method is the method which is best suited to the facts and circumstances of each particular international transaction and which provides the most reliable measure of an arm's length price in relation to the international transaction. In selecting the most appropriate method, the nature of international transaction, the functions, assets and the risks taken by the associated enterprise and the availability and comparability of the independent data are taken into account. Therefore, it would be inappropriate to provide that the cost plus method should be used in the majority of cases. The most appropriate method as mandated by the statute should be used because cost is not the only aspect of a transaction.

Further, clause 117(1) provides that the methods for determining the arm's length price shall be prescribed. Currently also no inter-se priority between methods has been specified in the Act.

iii) Services cannot be placed on the same footing as raw material purchases. In any case, the two enterprises will not be categorized as associated enterprises unless the amount payable and conditions relating to the services are influenced by the other enterprise.

iv) This is an anti-abuse measure and the intention is to prevent tax evasion through transactions with notified non cooperative jurisdictions or specified locations. Therefore, the suggestion is not acceptable. Moreover, this provision has now been introduced in the Income-tax Act vide Finance Act, 2011 as a tool box of counter measures to deal with non cooperative jurisdictions.

The practical difficulties pointed out are not such that cannot be overcome. Since the assessee is having business transactions with parties in such notified jurisdictions, it may not be too difficult for it to gather the requisite information

15.14 **The Committee appreciate the fact that the proposed transfer pricing regulations to determine 'arm's length price' for international transactions have been specially intended as an anti-abuse measure to prevent tax evasion through transactions with notified non-cooperative jurisdictions or certain specified locations. However, hardship to the tax payers should be avoided by excluding purely commercial transactions between unrelated parties from its purview. Furthermore, a monetary threshold may also be prescribed for granting exemption from these regulations to small and economically insignificant transactions. The Bill may be amended accordingly.**

B. ADVANCE PRICING AGREEMENT

15.15 The Direct Tax Code proposes that the Central Board of Direct Taxes with the approval of the Central Government, may enter into an advance pricing agreement with any person, specifying the manner in which arm's length price is to be determined in relation to an international transaction, to be entered into by that person. The Advance Pricing Agreement (APA) binds the taxpayer as well as the department to the agreed transfer pricing methodology upto a period of 5 years. The APA brings certainty to the taxpayer that there will be no adjustment

to his income if he follows the method of determining the arm's length price, which has been agreed with the department.

15.16 Clause 118 of the Code deals with Advance Pricing Agreement. The Clause reads as under:

> (1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, specifying the manner in which arm's length price is to be determined in relation to an international transaction, to be entered into by that person.
>
> (2) The manner of determination of arm's length price referred to in sub-section (1) may be any method including one of the prescribed methods, as referred to in sub-section (1) of section 117, with such adjustments or variations, as may be necessary or expedient so to do.
>
> (3) The arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, notwithstanding anything in this Chapter, shall be determined in accordance with the advance pricing agreement so entered.
>
> (4) The agreement referred to in sub-section (1) shall be valid for such financial years as specified in the agreement which in no case shall exceed five consecutive financial years.
>
> (5) The advance pricing agreement entered into shall be binding—
>
> (*a*) only on the person in whose case the agreement has been entered into;
>
> (*b*) only in respect of the transaction in relation to which the agreement has been entered into; and
>
> (*c*) on the Commissioner, and the income-tax authorities subordinate to him, only in respect of the said person and the said transaction.
>
> (6) The agreement referred to in sub-section (1) shall not be binding, if there is any amendment to the Code having bearing on the agreement so entered.
>
> (7) The Board may, by order, declare an agreement to be *void ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.
>
> (8) Upon declaring the agreement *void ab initio*, the provisions of this Code shall, after excluding the period beginning with the date of such

agreement and ending with the date of order under sub-section (7), apply to the person as if such agreement had never been entered into.

(9) For the purposes of this section, the Board may, by notification, frame a Scheme for advance pricing agreement in respect of an international transaction

15.17 There are no such provisions in the existing Income Tax Act, 1961.

15.18 Bombay Chambers of Commerce has suggested the following changes in its memorandum submitted to the Committee:

Certain safeguards need to be built into the APA to ensure that the corresponding adjustment is allowed in the books of the other transacting associated enterprise. More particularly, this is necessary in situations where there is no DTAA or where article 9(2) is not there in a particular DTAA (which permit such an adjustment).

A mechanism for framing APAs should be entrusted to an independent agency appointed by the CBDT in order to ensure that APAs are current and reflect the prevalent actual commercial realities. A mechanism by which the taxpayer may apply for a review of an APA should be formulated.

15.19 Bombay Chartered Accountants Society has suggested the following changes in its memorandum submitted to the Committee:

Time limit for finalizing the APA should be prescribed. As undue delay in finalizing the agreement will cause uncertainty among taxpayers while structuring their international transactions and defeat the purpose of introducing APA provisions.

15.20 CII has suggested the following changes in its memorandum submitted to the Committee:

The DTC does not provide for the situation, where, for commercial or business reasons, a taxpayer who has made an application for an APA may desire to withdraw it. Appropriate procedure for withdrawal of an application for APA made by a taxpayer should be provided for. Further, there should be provisions for renewal of the APA after the expiry of 5 years in case the business model of the taxpayer remains the same.

Further, it may be provided that the APA entered into would be valid/binding in the case of the successor to the business where the successor opts to continue with the same arrangement.

Considering that the APA is binding on the person, there may be a situation where the APA entered into with the Indian authorities may not

be accepted by the tax authorities of the other country. Hence, the applicant may be provided with a mechanism for the review of the same APA based on the consideration of the tax authorities in the other country.

15.21 The Ministry's reply to the above suggestions is as follows:

i) Bilateral APAs are normally dealt with in DTAAs only. Through domestic law, the foreign governments cannot be forced to make compensatory adjustments. The issues raised as regards review would be examined at the time of framing of the scheme by the Board under clause 118(9).

ii) The issue would be considered at the time of framing of the scheme by the Board under clause 118(9).
iii) Conflicting interests of two jurisdictions cannot be addressed through domestic law. This can only be addressed through bilateral APAs under DTAAs.

15.22 **The Committee would recommend that the proposed mechanism for framing Advance Pricing Agreements (APAs), specifying the manner in which arm's length price is to be determined in respect of international transactions should be entrusted to an independent agency appointed by the Central Board of Direct Taxes consisting of technical and judicial Members, who will advise the Board on APAs in order to ensure that the APAs reflect the prevalent commercial practices/ realities. Procedural safeguards to fortify the interest of applicants may be put in place in the scheme guidelines. The Committee desire that the APAs should be concluded in a time-bound manner. Further, DTAAs, already concluded should be suitably amended to include APAs and in future, the APAs should be included in the DTAAs. In this context, the Committee would also suggest that the existing Advance Ruling System should also be expanded to cover the resident entities as well.**

C. GENERAL ANTI-AVOIDANCE RULE (GAAR)

15.23 The provisions relating to General Anti-Avoidance Rule do not exist in the present Income Tax Act, 1961. GAAR provisions empowers tax authorities to declare any transaction as impermissible and determine the tax consequences thereof, if the transaction has been entered into with the main object of obtaining a tax benefit and it lacks commercial substance. The onus of proving that main

purpose of particular transaction was not obtaining a tax benefit, lies with the tax payers. The GAAR, confers wide discretionary powers on the Commissioner of Income Tax (CIT) including the power to invoke GAAR. The Code however provides for a Dispute Resolution Panel, comprising of three Commissioner level officers, which can be approached by the tax payer against the decision of the CIT.

15.24 Clause 123 of the Code deals with General Anti-Avoidance Rule. The Clause reads as under:

(1) Any arrangement entered into by a person may be declared as an impermissible avoidance arrangement and the consequences, under this Code, of the arrangement may be determined by—

(a) disregarding, combining or recharacterizing any step in, or a part or whole of, the impermissible avoidance arrangement;
(b) treating the impermissible avoidance arrangement—

(i) as if it had not been entered into or carried out; or

(ii) in such other manner as in the circumstances of the case, the Commissioner deems appropriate for the prevention or diminution of the relevant tax benefit;

(c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

(d) deeming persons who are connected persons in relation to each other to be one and the same person;

(e) reallocating, amongst the parties to the arrangement—

(i) any accrual, or receipt, of a capital or revenue nature; or

(ii) any expenditure, deduction, relief or rebate; or

(f) re-characterizing—

(i) any equity into debt or vice versa;

(ii) any accrual, or receipt, of a capital or revenue nature; or

(iii) any expenditure, deduction, relief or rebate.

(2) The provisions of sub-section (1) may be applied in the alternative for, or in addition to, any other basis for determination of tax liability in accordance with such guidelines as may be prescribed.

(3) The provisions of this section shall apply subject to such conditions and in the manner as may be prescribed.

15.25 Clause 124 (15) of the Code defines the term impermissible avoidance arrangement as follows:-.

(15) "impermissible avoidance arrangement" means a step in, or a part or whole of, an arrangement, whose main purpose is to obtain a tax benefit and it —

(a) creates rights, or obligations, which would not normally be created between persons dealing at arm's length;

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Code;
(c) lacks commercial substance, in whole or in part; or

(d) is entered into, or carried out, by means, or in a manner, which would not normally be employed for bona fide purposes

15.26 Clause 125 of the Code deals with presumption of purpose

125. (*1*) An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit unless the person obtaining the tax benefit proves that obtaining the tax benefit was not the main purpose of the arrangement.

(*2*)An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

15.27 Indian Bank Association has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

A. Clause 123 provides that GAAR provisions may be applied in the alternative for, or in addition to, any other basis for making the assessment. Suitable safeguards must be built in to ensure that GAAR is applied in appropriate cases. Examples of such safeguards are as follows:

1. Before applying the GAAR, the assessing officer will be required to record his reasons in writing.

2. He must provide an opportunity of being heard to the assessee.

3. If the assessing officer is not satisfied with the reasons provided by the assessee, he must refer the arrangement to an independent high level panel for deciding on GAAR.
4. GAAR to be applied only if the panel grants its approval for applying the provisions of this clause.

5. GAAR should be administered by an independent panel unlike the current DRP.

B. Besides, a sub-section (4) to section 123 should be inserted as under-

"(4) The provisions of this section will not be applicable to such arrangements as may reasonably be considered to have been undertaken or arranged primarily for genuine purposes."

C. Further, clarity is required whether GAAR would be applied to transactions done before the date of enactment of the DTC but which may have an impact on subsequent years. GAAR should not apply to transactions already completed prior to the date of enactment of the DTC.

D. Moreover, GAAR should not apply to transactions which were subject matter of a ruling given by the Authority for Advance Rulings (AAR).

E. In addition, the GAAR override should not apply to treaties which already have the 'limitations of benefits' article.

The Ministry's reply to the above suggestions is as follows:

A. The conditions and the manner under/in which GAAR would be applicable, would be prescribed through Rules under clause 123(3).

B. Using the phrase 'genuine purposes' would create ambiguity as this phrase is difficult to define. On the other hand, the four criteria mentioned in clause 134 (15) would in themselves exclude a transaction for "genuine purposes". (There is no clause 134(15). It should be 124(15).

C. Would be considered at the time of prescribing the guidelines.

D. The AAR gives rulings only in cases where the transaction is not part of the avoidance arrangement.

E. Limitation of benefit clause as available in India's DTAAs has limited application and would not cover all the cases/circumstances which would be covered through GAAR.

15.28 The Institute of Chartered Accountant of India has suggested the following changes in the proposed clause its memorandum submitted to the Committee:

A. The Government could consider replacing the definition of the term "impermissible avoidance arrangement" currently contained in the DTC with the following:

"impermissible avoidance arrangement means a step in, or a part or whole of, an arrangement: (1) whose main purpose is to obtain a tax benefit; (2) which may reasonably be considered as not having a bonafide business purpose or lacking in commercial substance; and (3) which may reasonably be considered as resulting in misuse or abuse of the provisions of the DTC having regard to the provisions of the DTC read as a whole."

B. The code defines the term "tax benefit" in clause 124(25) to include even a deferral of tax. The Government could reconsider the inclusion of tax deferral as a tax benefit for purposes of GAAR, considering that a specific provision in the CFC rules has been incorporated to address tax deferral. The Government should clarify that if a tax benefit has been derived by virtue of a tax treaty provision and such tax treaty already contains a specific provision to prevent abuse of the tax treaty, the GAAR should not be applied overriding the treaty anti-abuse provision.

C. The code further defines terms such as "commercial substances" and "bona fide business purpose" in section 124(19) and 124(10), respectively. These terms should be defined in an exhaustive manner as the current definition could result in some degree of subjectivity and ambiguity in its application.

D. An independent authority comprising of members who have judicial experience including businessmen and professionals of experience should be constituted for objectively reviewing and approving all cases proposed by a CIT for invoking GAAR. This would serve as an effective inbuilt check on the discretion/misuse by the revenue authority, as also help in maintaining the sanctity of the GAAR process. The reference may be for formal directions or for deciding, on prima facie basis, whether GAAR is at all attracted. This body, along the lines of the authority for advance rulings, could comprise of a chairman who is a retired Supreme Court judge. This seems to have been the trend even in countries such as Spain and China where the proceedings under GAAR are approved by either a consultative committee or by the state body responsible for the administration of taxes. Alternatively, the DRP may be constituted comprising of such independent judicial members or well known industry experts so appointed for the purpose.

E. In addition, the Government may consider providing for a maximum period (say, 12 months from date of filing of tax return) within which the CIT should seek to invoke GAAR

15.29 The Ministry's reply to the above suggestions is as follows:

A. The suggestion is not acceptable as the definition provided in the DTC is based on international practice. The suggested definition would make

all conditions unilateral which would narrow the scope of the provision to such an extent so as to make it ineffective as an anti avoidance tool.

B. General anti avoidance rules have been incorporated to ensure economic efficiency and fiscal justice and to prevent use of legal constructions or transactions to avoid payment or deferral of tax , thereby resulting in violation of horizontal equity. The GAAR provisions will check treaty shopping by the tax payers for avoidance of payment of tax in India. CFC being anti-deferral measure is applicable in limited number of cases involving foreign companies. Limitation of benefit clause as available in India's DTAAs has limited application and would not cover all the cases/circumstances which would be covered through GAAR.

C. The definitions of "lacks commercial substance" and "bona fide purpose" are based on international practices.

D. Under the DTC, GAAR provisions will be invoked by the Commissioner who is a senior functionary of the Department. Besides, the orders will be subject to approval of DRP, a collegium of three Commissioners.

Further, there would be adequate safeguards built into the system when the conditions and circumstances are prescribed. This should allay such apprehensions.

E. Such a time limit cannot be provided as the tax avoidance arrangement may pertain to more than one year. The tax authority is required to invoke provisions of GAAR as and when relevant information comes to his notice.

15.30 FICCI has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

A. The guidelines to be issued by the CBDT for providing circumstances in which GAAR could be invoked should be objective, easy to administer and interpret and remove elements of uncertainty. These guidelines should cover specific circumstances which would prescribe situations where GAAR can be invoked.

B. The guidelines providing for circumstances in which GAAR can be invoked should be arrived at after a due consultative process with all the stakeholders. The guidelines should consider the following:

i. GAAR is not a revenue raising mechanism.

ii. GAAR is intended to only prevent abusive tax avoidance and should not interfere with legitimate and commercial transactions.

iii. It should be ensured that the tax authorities evaluate transactions on a holistic basis rather than 'picking and choosing' specific steps in a

particular transaction and alleging impermissible tax avoidance. For evaluating whether a transaction involves impermissible tax avoidance, the tax authorities should view the entire transaction as a whole and the impact in the hands of all the parties to such transaction should be considered. A transaction or part of a transaction should not be viewed in isolation nor should only the impact in the hands of one party be considered for evaluating impermissible tax avoidance.

iv. The definition of 'tax benefit' in GAAR also covers a reduction, avoidance of deferral of tax due to the applicability of a DTAA. Further, the definition of 'impermissible avoidance agreement' covers a part or whole of an arrangement whose main purpose is to obtain a 'tax benefit'. A combined reading of both these definitions seems to suggest that a taxpayer who takes the benefit of the DTAA provisions in respect of a particular transaction could be construed as having obtained a significant tax benefit and thus trigger GAAR. This interpretation could lead to absurd results as any action of claiming a DTAA benefit by a taxpayer could potentially attract GAAR. Consequently, the provisions of sec 291(8) of the bill enabling a taxpayer to choose between the provisions of the relevant DTAA and the Bill, whichever is more beneficial would be rendered otiose. Hence, a clarification may be provided that a mere choice to choose a DTAA provisions over the Bill would not be construed as an act inviting application of GAAR.

v. In cases where the tax authorities seek to invoke GAAR in the hands of one taxpayer, the corresponding relief should be granted to the other party to the transaction/ arrangement. To illustrate, the tax authorities could seek to recategorise dividends in the hands of one taxpayer as interest, thereby increasing the tax payable of one taxpayer without granting a corresponding deduction to the entity paying the dividend. In such cases, the corresponding deduction of interest expense should be granted to the other party.

vi. GAAR provision should be amended to place the burden of proving the existence of an impermissible tax avoidance engagement on the tax authorities prior to GAAR being invoked for any transaction instead of burden on the taxpayer.

vii. The threshold limit for invoking GAAR which is proposed to be prescribed should be reasonable.

viii. The tax authorities should be restricted from invoking the provisions of GAAR during the course of reassessment proceedings and should also be prohibited from initiating reassessment proceedings by invoking GAAR.

ix. GAAR provisions should not apply in cases where a transaction / arrangement have been approved by a High court or Supreme Court. For example, a High Court approval is required for merger of companies

15.31 The Ministry's reply to the above suggestions is as follows :

A. Tax avoidance, like tax evasion, seriously undermines the achievements of the public finance objective of collecting revenues in an efficient, equitable and effective manner. Sectors that provide a greater opportunity for tax avoidance tend to cause distortions in the allocation of resources. Since the better-off sections are more endowed to resort to such practices, tax avoidance also leads to cross-subsidization of the rich. Therefore, all tax avoidance, like tax evasion, is economically undesirable and inequitable. On considerations of economic efficiency and fiscal justice, a taxpayer should not be allowed to use legal constructions or transactions to violate horizontal equity. In view of the above general anti-avoidance provisions have been introduced in the DTC. The GAAR provisions are comprehensive and are to be invoked by the Commissioner who is a senior functionary of the Department. Further, clause 123(3) already provides that the conditions and the manner under/in which GAAR would be applied, shall be prescribed.

B. Due consultative process with all stakeholders would be followed before formulation of guidelines.

(i) It is not a revenue raising measure but is there to prevent loss of revenue.

(ii) The definition of impermissible arrangement takes care of these concerns.

(iii) Appropriate guidance will be provided to tax authorities through guidelines.

(iv) A mere tax benefit under a tax treaty would not automatically lead to application of GAAR unless other conditions prescribed under clause 124(15) are also fulfilled.

(v) Even under the current law, the corresponding adjustment due to application of an anti-abuse provision is not provided.

(vi) Burden of proof on taxpayer is necessary as all the relevant information would be in the possession of the taxpayer and in the absence of such provision it would be difficult to obtain relevant information.

(vii) Will be considered while framing the guidelines.

(viii) As GAAR is intended to deal with impermissible avoidance arrangement, which may have impact over several years, placing this type of restriction is not feasible.

(ix) The approval of High Court or Supreme Court is with specific objective and may not take into account tax avoidance issues and circumstances which are relevant at the time of invocation of GAAR.

15.32 Bombay Chartered Accountant's Society has suggested the following changes in the proposed clause in its memorandum submitted to the Committee:

> **A.** Government should set up a "Consultative Committee" which would have participation from all stakeholders so as to ensure a GAAR which serves as a deterrent to impermissible tax avoidance/tax evasion schemes and which at the same time does not have an adverse impact on the business of the honest taxpayer.
>
> **B.** It would be extremely relevant to defer the implementation of GAAR till such time the Committee comes up with a new GAAR which serves the purposes of both the taxpayer as well as the exchequer.
>
> **C.** Alternatively, it is suggested that CBDT should be empowered to notify "Observed Impermissible Avoidance Arrangements" under which provisions of GAAR can be invoked and it is only in these Notified Cases, the Commissioner should be empowered to invoke GAAR provisions.

15.33 The Ministry's reply to the above suggestions is as follows:

> **A. & B.** The draft GAAR provisions have been in public domain since 2009. Based on the inputs received from all stakeholders, adequate safeguards have been provided. There is no need to defer the implementation of GAAR. Since GAAR would be operational under a set of guidelines framed by CBDT, there should be no cause for concern in this regard. Further, the guidelines to be prescribed shall also be placed in the public domain before finalization.
>
> **C.** These are general and not specific anti-avoidance rules. Therefore, restricting them to specific arrangements would defeat the very purpose of this provision. As indicated earlier the conditions and the manner under/in which GAAR would be applicable, shall be prescribed.

15.34 **The Committee note that the Direct Taxes Code proposes to introduce the General Anti Avoidance Rules (GAAR) for the first time in the statute book with a view to plug tax avoidance, as this practice is economically undesirable and fiscally inequitable. The stated objective behind this proposal is to prevent a tax payer from using legal construction or transactions to gain undue fiscal advantage. This new anti-avoidance proposal is thus expected by the Government to ensure economic efficiency and fiscal justice. The GAAR proposals seek to empower the Income Tax Authorities, namely the Commissioners to invoke the applicability of the provisions and shifts the onus to the taxpayer. The Ministry have stated that appropriate guidance for applying these**

provisions will be provided to tax authorities through guidelines. The Committee however find that some serious concerns have been expressed by a range of stakeholders on the GAAR proposals as highlighted below:

- **The GAAR confers vast and discretionary powers to the tax authorities to disregard any business transactions including for instance, a tax neutral merger, or holding company structures, especially those which involve countries with which India has entered into favourable tax treaties. This would lead to significant uncertainty with respect to conducting business in India.**
- **A tax treaty override (without any objective parameters) under GAAR could raise concerns about the sanctity of benefits conferred under treaties and affect India's credibility as a reliable treaty partner.**
- **The DTC does not contain any 'grandfathering' provisions. Structures that are currently in place could potentially be challenged under the new legislation causing significant hardship to existing investors.**
- **The application of GAAR to a specific structure by the tax authorities could change from year to year, resulting in significant fiscal uncertainty.**
- **Transactions/ structures that have been specifically upheld by Courts could also potentially be targeted under the GAAR.**
- **The GAAR could lead to cumbersome, time-consuming and costly litigation each time a transaction or structure is sought to be tested under the GAAR by the tax authorities.**

15.35 **In view of the apprehensions expressed by different stakeholders on the applicability of GAAR proposals, the Committee would recommend that the Ministry and the CBDT should seek to bring greater clarity and preciseness to the scope of the provisions. There should be certainty on these provisions so that foreign investors do not become wary of investing in the country. The conditions dealing with 'misuse or abuse of DTC provisions' and the 'manner applied for the arrangements not for bona fide business purpose' and 'lacks commercial substance, being very widely worded and being subjective, need to be more specifically defined to avoid undue discretion to tax authorities. In the Committee's view, the onus should rest on the tax authority invoking GAAR and this should not be shifted to the taxpayer. In sum and substance, the Committee would like to**

point out that the following aspects should be carefully considered before finalizing the GAAR proposals :

- **The provisions to deter tax avoidance should not be end up penalizing tax- payers who have genuine reasons for entering into a bonafide transaction.**

- **Frivolous cases should be avoided for which a threshold may be prescribed under the Rules.**

- **It has been proposed that the orders of the Commissioner invoking GAAR provisions will be subject to approval of Dispute Resolution Panel (DRP) which is a collegium of three Commissioners of Income Tax. Since this is a purely departmental body, it will be fair and just if the review is done by a more independent body. The DRP should give ample opportunity to the assessee to present his case. The Assessing Officer should record his reasons, in writing, before passing the order invoking GAAR. Further, the DRP should be headed by a Chief Commissioner of Income Tax and two other Members who will be independent technical persons.**

- **A threshold limit for specific amount of tax may be prescribed for application of GAAR, which may be reviewed with experience.**

- **It would also be fair to apply GAAR provisions prospectively so that it is not made applicable to existing arrangements/transactions. Alternatively, suitable grandfathering provisions may be made to protect the interest of the tax- payers who have entered into structures / arrangements under the existing law.**

- **Tax-payers may also be permitted to obtain an Advance Ruling to determine whether any kind of transaction would fall within GAAR.**

- **Clause 123(1) of the Code seems to suggest that while invoking GAAR provisions, the entire arrangement may be declared as "impermissible arrangement". It thus needs to be clarified that only that part of the arrangement would be invoked which is proved as "impermissible".**

- **Uncertainties with regard to applicability of tax treaty provisions should be removed so that India's credibility as a reliable treaty partner is not affected.**

- **The proposals should not lead to any fiscal uncertainty or ambiguity. It should be ensured that any of the proposals does not pave the way for avoidable litigation, which is already at a very high level in tax matters.**

The GAAR proposals may be amended accordingly and the guidelines framed keeping in view the afore-stated concerns. The Committee desire that these guidelines should be laid in Parliament along with the duly amended Direct Taxes Code Bill.

CHAPTER –XVI - COLLECTION AND RECOVERY OF TAX

DEDUCTION OF TAX AT SOURCE

16.1 Assessee pays tax in the assessment year on the income earned in previous year. Due to this rule the tax collection is delayed till the completion of the previous year. Also sometimes people conceal their income and the tax is not paid at all. In order to overcome these problems, Government started deducting some amount of tax from the amount which is receivable by the assessee. The amount of tax so deducted is called as "Tax Deducted at Source", i.e., TDS.

16.2 The Income Tax Act, 1961, provides that tax deducted at source under the provision of the Act and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made and credit shall be given to him for the amount so deducted on production of a certificate to that effect.

16.3 In the process of TDS, deduction of tax is effected at the source when income arises or accrues. Hence where any specified type of income arises or accrues to any one, the Income-tax Act enjoins on the payer of such income to deduct a stipulated percentage of such income by way of Income-tax and pay only the balance amount to the recipient of such income.

16.4 The tax so deducted at source by the payer, has to be deposited in the Government treasury to the credit of Central Government within the specified time. The tax so deducted from the income of the recipient is deemed to be payment of Income-tax by the recipient at the time of his assessment.

16.5 Income from several sources is subjected to tax deduction at source. Presently this concept of TDS is also used as an instrument in enlarging the tax base. Some of such income that is subjected to 'Tax Deduction at Source' is as follows :

- Salary;
- Interest;
- Rental fee;
- Interest on securities;

- Insurance commission;
- Dividends from shares and UTI /Mutual Funds;
- Commission and brokerage;
- Prize money won from lotteries, horse races etc.;
- Payments to non-resident sportsmen or sports associations;
- Commission on sale of lottery tickets;
- Fees for professional and technical services and the like;
- Compensation for compulsory acquisition;
- Income from units of an offshore fund;
- Income from foreign currency bonds or shares of Indian Companies (unless specified as tax-free).

Proposed clauses in the DTC Bill, 2010.

Clause: 195 and 292(1)

Clause 195 – Deduction or collection of tax at source and advance payment

16.6 Clause 195 reads as under :

195. (1) Any person responsible for making a specified payment shall, at the time of payment, deduct income-tax therefrom at the appropriate rate.

(2) The specified payment referred to in sub-section (1), if the deductee is a resident, shall be the payment of the nature specified in column (2) of the Third Schedule and the appropriate rate, in respect of such specified payment, shall be the rate specified in the corresponding entry in column (3) of the said Schedule.

(3) The specified payment referred to in sub-section (1), if the deductee is a nonresident, shall be the payment of the nature specified in column (2) of the Fourth Schedule and the appropriate rate, in respect of such specified payment, shall be the rate specified in the corresponding entry in column (3) of the said Schedule.

(4) Without prejudice to sub-section (3), where a rate in respect of such specified payment has been provided in the relevant agreement entered into, or adopted by, the Central Government under section 291, then appropriate rate referred to in sub-section (1) shall be the rate specified in the corresponding entry in column (3) of the Fourth Schedule or the rate provided in such agreement whichever is lower.
(5) Notwithstanding anything in this Code, the appropriate rate referred to in subsection (1) shall, in a case where the deductee has failed to furnish his permanent account number to the deductor (except where the deductee is not

required to obtain permanent account number under section 292), be the higher of following rates, namely:—

(a) twenty per cent.; and

(b) the rate specified in sub-sections (2), (3) or sub-section (4), as the case may be.

Clause 292 – Permanent Account Number

16.7 Clause 292 reads as under :

292. (1) Every person who fulfils such conditions and requirements as may be prescribed shall make an application for the allotment of a permanent account number and such person shall be allotted.

16.8 **Existing provision in the Income Tax Act, 1961**

The provisions of TDS have been consolidated in the DTC. Whereas the requirement of TDS is laid down in new section 195, the Schedules 3 & 4 prescribe the payments on which TDS is required and the rate thereon.

Requirement to furnish Permanent Account Number.

206AA. (1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

(i) at the rate specified in the relevant provision of this Act; or

(ii) at the rate or rates in force; or

(iii) at the rate of twenty per cent.

(2) No declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A shall be valid unless the person furnishes his Permanent Account Number in such declaration.
(3) In case any declaration becomes invalid under subsection (2), the deductor shall deduct the tax at source in accordance with the provisions of subsection (1).

(4) No certificate under section 197 shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

(5) The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section (1) shall apply accordingly.

16.9 On this clause, several suggestions have been received from various organisations which are given as under :

(i) Sec 195 of the IT Act provided for deduction of tax at source from 'any sum chargeable' under the Act. The provisions of DTC do not bear the words 'any sum chargeable'. This leads to serious repercussions on cross border transactions.

Every payment specified in the fourth schedule must be subjected to withholding tax. The fourth schedule also has residual clause for every other income. Therefore, the code envisages a scheme to collect tax on items of income not chargeable to tax in India.

This would even lead to a situation of tax deduction on import transaction as well. As it is, most of the cross border transactions envisage payment by Indian business enterprises net of Indian taxes. This has the impact of increasing transaction cost in the hands of Indian business enterprises. If withholding tax provisions are expanded so greatly, to apply even to imports, the tax on such imports would be passed on to the Indian enterprises as if it is a customs duty or such other indirect taxes and will push up the cost of such inputs. Therefore, the tax should not be collected if income is not subject to tax under the code. **(Madras Chamber of Commerce and Industry)**

(ii) In respect of non-residents, all payments made from overseas branches of an Indian company in relation to business carried out in respective countries would attract TDS in India as there is no mention of the phrase 'sum chargeable to tax' anywhere except in the residual clause of 4th Schedule. This would become a cost to the Indian company.

This is an impossible situation and must not have been intended.

In fact the residual item is more beneficial than any other item in the Schedule 4, which is an anomaly and needs to be corrected.

Therefore, TDS should be applied to non-resident deductees only if the income is chargeable to tax in India. **(NASSCOM).**

(iii) It should be clarified in the DTC that non-residents who do not have a branch or place of business in India are not required to comply with the India withholding tax obligations. **(FICCI).**

(iv) Clause 195(5) prescribes a withholding tax rate of 20% or the higher rate prescribed where deductee does not give his PAN. For payment to nonresidents, where the contract is tax protected, this would only increase the burden of the resident deductor.

It is suggested that a provision should be put in place to deduct tax at prescribed rate on basis of a declaration from the non-resident if he does not furnish his PAN. **(FICCI).**

(v) Provisions of clause 195(5) should not apply to payments to non-residents as the potential requirement of all nonresident persons to obtain a PAN is unreasonable and against the generally accepted international tax principles of respecting the withholding tax rates stated in tax treaties.

Alternatively, clause 292(1) should exclude such categories of non-resident persons who are entitled to benefits of lower TDS rates under a tax treaty and do not have a business connection in India. **(Bombay Chartered Accountants' Society).**

(vi) Any person responsible for making a specified payment is required to deduct tax. Person as per cl. 314(184) includes a company which in turn as per cl. 314(154) includes a foreign company. Therefore, a foreign company would be liable to deduct TDS on specified payments made by it to residents or non-residents. This would create difficulties for those companies who do not have a permanent establishment in India. They would have to obtain TAN, PAN, file TDS returns etc.

Keeping in view the various practical difficulties, TDS provisions in case of payments by body corporate incorporated outside India to residents should not be made applicable.

Alternatively, necessary provisions exempting various small and non-recurrent payments or for some threshold exemption limit should be made.

In any case, exemption in respect of payment to chartered accountants and lawyers should continue to be exempt from such provisions, as is presently made exempt vide circular no 766 dated 24.04.1998. **(Bombay Chartered Accountants' Society).**

16.10 In respect of each of the above said suggestions, the written comments of the Ministry are given as under :

(i) In the fourth Schedule for nonresidents, in the Table, in Item number 9, the words used are 'any other sum chargeable to tax'. All other items other than this residual item are in nature of income.

Therefore, the apprehension that even import or all payments would get covered under Schedule 4 is not correct.

(ii) **Will be considered**.

(iii) Even under the Income-tax Act, wherever the income is chargeable to tax in India, the nonresident, even if he may not have a branch or place of business in India would be required to comply with Indian withholding tax obligations.

The DTC has also similar provisions.

(iv) & (v) Quoting of PAN is system requirement. The procedure for issue of PAN to non-residents is being simplified. Moreover, the deductor can also obtain PAN as a representative assessee of the non-resident deductee. Making PAN mandatory where transactions undertaken are linked with India allows for proper reporting of such transactions under DTAAs. It also allows for smooth issue of refunds where non-resident makes the claim, as PAN is required for filing return of income.

(vi) Even under the Income-tax Act, wherever the income is chargeable to tax in India, the nonresident, even if he may not have a branch or place of business in India would be required to comply with Indian withholding tax obligations.

The DTC has also similar provisions. To deal with such exceptional nonrecurring situations, providing enabling power to the Board **will be considered**.

16.11 **The Committee are in agreement with the Ministry that even import or all payments would get covered under Schedule 4 is not correct.**

16.12 **The Ministry, having agreed with the suggestion that TDS should be applied to non-resident deductees only if the income is chargeable to tax in India, the Committee expect that suitable modification to this effect is made in the clause.**

16.13 **As suggested, provisions of clause 195(5) should not apply to payments to non-residents, as potential requirement of all non-resident persons to obtain Permanent Account Number is against the generally accepted international tax principles of respecting the withholding tax rates stated in tax treaties. The Committee, therefore, recommend the Ministry to review the said clause and make amendments accordingly.**

16.14 **The Committee while endorsing the views of the Ministry that wherever the income is chargeable to tax in India, the non-resident, even if he may not have a branch or place of business in India, would be required**

to comply with Indian withholding tax obligations in pursuance of existing provisions in the Income Tax Act, which have been incorporated in DTC. The Committee, therefore, desire that as suggested and agreed to by the Ministry, suitable amendment may be incorporated in the clause to deal with exceptional non-recurring situations by providing enabling power to the Board.

Clause: 195(1) and 196(1)

16.15 Clause 195 (1) reads as under:

195. (*1*) Any person responsible for making a specified payment shall, at the time of payment, deduct income-tax therefrom at the appropriate rate.

16.16 Clause 196 (1) reads as under:

196. (*1*) For the purposes of section 195, the specified payment shall be deemed to have been made, if the payment has been made—

(*a*) in cash;

(*b*) by issue of a cheque or draft;

(*c*) by credit to any account, whether called suspense account or by any other name; or

(*d*) by any other mode as may be prescribed, whichever is earlier.

16.17 **Existing provision in the Income Tax Act, 1961**

195. (1) Any person responsible for paying to a nonresident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head 'Salaries') shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

The portion shown as bold has been provided under various sections of the IT Act, and the provisions have been consolidated in the DTC in section 196.

Plain reading of sec 195(1) gives an impression that for the purposes of TDS the existing provisions contained in sec 195(1) of the ITA of 'at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier,' has been replaced with the TDS to be made 'at the time of the payment'

However, sec 196(1) provides that for the purposes of sec 195, the payment of income shall be deemed to have been made, if the payment has been made by credit to any account, whether called suspense account or by any other name.

Issue may arise as to the meaning of the term ‘credit to any account‘.

For the sake of simplicity and clarity, the language of sec 195 & 196(1) of the DTC should be suitably amended to bring out the intention very clearly. **(Bombay Chartered Accountants’ Society).**

16.18 On this clause the comments of the Ministry are as follows :

> Rephrasing as ‘credit to the account of the payee or to any account, whether called suspense account or by any other name‘ **will be considered**.

16.19 **The Committee find that the wording of the provision is fraught with ambiguity as a result of poor drafting. The Committee, therefore, desire that as suggested and agreed to by the Ministry the language of clause 195 & 196 (1) of the DTC should be suitably amended to bring about clarity by rephrasing it as ‘credit to the account of the payee or to any account, whether called suspense account or by any other name’.**

Clause :195(1) and 314(187)

16.20 Clause 195 (1) reads as under:

195. (1) Any person responsible for making a specified payment shall, at the time of payment, deduct income-tax therefrom at the appropriate rate.

16.21 Clause 314 (187) reads as under:

314 (187) “person responsible for making specified payment” means—

(a) an employer who makes the payment which is in the nature of salary;

(b) any person who makes the payment of the nature specified in column (2) of the Schedule or the Fourth Schedule.

In respect of payments to non-residents for sale of the shares on the stock exchanges, it is not clear as to who is the person making the specified payments.

Therefore, language of the sec 314(187) should be suitably modified and for the sake of control and certainty, the authorized dealers making the payment to the non-resident may be made ‘person responsible for making specified payment‘ to

non-residents in such cases. **(Indian Merchant's chamber and Bombay Chartered Accountants' Society).**

16.22 The comments on this clause, as furnished by the Ministry are given as under :

> "Currently, in such cases it is the broker, being a member of a stock exchange, who is responsible for making the payment. The liability to deduct tax cannot be cast on an authorized dealer".

16.23 On clause 195(1) Bombay Chartered Accountants' Society in their written memorandum submitted the following suggestion :

> "Corporate bonds/debentures are usually traded on exchanges under debt segment. Broken period interest is taxed in such case on day to day basis. In case FIIs invest and then sell the debt instrument, TDS is required to be made on broken period interest amount, even though no separate consideration is paid for the broken period interest.
>
> In such cases, the acquirer would not be in position to know whether the seller FII is entitled to any tax treaty benefits requiring deduction at lower rate of tax.
>
> Further, seller would not be in position to know the income chargeable to tax since the seller could have himself acquired the bond from third party on a cum interest basis.
>
> Further, in such event taxation cannot be on a gross basis but on a net basis for the seller.
>
> Finally, the issuer of the bond/debentures would withhold tax on payment by such issuer to the bond holder on the due date, resulting in excessive tax deduction in most cases.
> Therefore, there should be no tax withholding obligation on the acquirer of corporate bond or debentures especially with regard to traded bonds and debentures on the broken interest component.
>
> Further, FIIs are regulated entities and are required to maintain custodial facility and bank accounts and therefore the TDS withholding should be at such custodial / bank level".

16.24 In response to the above said suggestion, the comments of the Ministry are as follows :

> "Currently, under the Income-tax Act, tax is to be deducted on any interest payment, including broken period interest, to a FII at the applicable rate. In case of listed securities, the liability is on the broker to deduct tax. DTC has similar provisions".

16.25 The Committee agree with the views of the Ministry that same provisions exist in the current Income Tax Act as well as in the DTC for tax deduction on any interest payment which also includes broken period interest to a FII at applicable rate and liability on the broker to deduct tax in case of listed securities.

Clause 197 – Certificate for lower or no deduction of tax

16.26 Clause 197 reads as under :

197. (*1*) The deductee may make an application, in such form and manner as may be prescribed, to the Assessing Officer seeking a certificate for deduction of income-tax at a lower rate or, as the case may be, no deduction of income-tax from payments to be received by him.

(*2*) The deductor may make an application, in such form and manner as may be prescribed, to the Assessing Officer seeking a certificate for deduction of income-tax at a lower rate or, as the case may be, no deduction of income-tax from payments to be made by him to a non-resident deductee.

(*3*) Where the Assessing Officer is satisfied that the total income of the deductee justifies deduction of income-tax at a lower rate or no deduction of income-tax, he shall give to the deductee or the deductor, as the case may be, such certificate as may be appropriate.

(*4*) The deductor shall deduct income-tax at the rates specified in the certificate issued under sub-section (*3*), until—

(*a*) such certificate is cancelled by the Assessing Officer; or

(*b*) the expiry of the validity of the certificate, whichever is earlier.

16.27 **Existing provision in the Income Tax Act, 1961**

195(2) Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a nonresident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable. No deduction to be made in certain cases.

197. (1) Subject to rules made under sub-section (2A), where, in the case of any income of any person or sum payable to any person, income-tax is required to be

deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of sections 192, 193, 194,194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA and 195, the Assessing Officer is satisfied] that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

197A. (1) Notwithstanding anything contained in section 194 or section 194EE, no deduction of tax shall be made under any of the said sections in the case of an individual, who is resident in India, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 194 or, as the case may be, section 194EE, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

16.28 Suggestions as received from various institutions on this clause are given as under :

> "(i) The DTC does not contain any provision for furnishing declaration for non-deduction of TDS on interest income where such interest income plus other income are below the exemption limit. This provision is presently provided in section 197 of the IT Act by way of filing of Form 15G/15H.
>
> Clause 197 of the code provides for obtaining a certificate from AO for deduction of tax at lower rate or no deduction of tax.
>
> For obtaining a certificate the assessee needs to make an elaborate application to the AO who has been empowered to grant the same if he is satisfied that the total income of the deductee justifies no deduction of tax, which in the practical context, is more difficult task than filing a simple tax return.
>
> Moreover, it will take lot of time and create huge workload on the department.
>
> To mitigate all such problems, the code may contain a clause for furnishing a declaration for non-deduction of TDS on interest income. **(ICSI).**
>
> (ii) Presently section 195(2) of the IT Act enables the tax authority to determine the nature of payment made to the nonresident and accordingly issue a certificate for appropriate WHT rate.
>
> The provisions of DTC in 197(2) and 197(3) empowers tax authority for such certificate based on total income of the non-resident recipient, which

would be impossible for the deductor to know. This would be particularly harsh, where the payment to non-resident is tax protected.

Therefore provision on lines of section 195(2) of the IT Act be inserted in the DTC. **(-FICCI)**

(iii) Presently section 195(3) of the Income-tax act empowers the tax authority to issue certificate for no TDS where the non-resident recipient is entitled to receive interest or any other sum without tax deduction.

Provision on the lines of sec 195(3) of the ITA should be introduced in the DTC to obviate difficulties likely to be faced in this regard by various entities. **(Bombay Chartered Accountants' Society).**

16.29 Comments of the Ministry on each of the above said suggestions are given as under :

"(i) The suggestion of providing for a declaration by the assessee on lines of the present provisions of section 197A of the IT Act **will be considered**.

(ii) **Will be considered** in case of nonresidents.

(iii) This requirement would be fulfilled by the proposed clause 197(3) read with 197(5) in the case of non-residents, under which the AO can issue a lower or nil TDS certificate".

16.30 **The Committee desire that as suggested and agreed to by the Ministry, necessary modifications regarding furnishing a declaration for non-deduction of TDS on interest income by the assessee on the lines of the current Income Tax Act be incorporated in the Bill to obviate difficulties faced in obtaining a certificate from Assessment Officer in this regard.**

16.31 **As suggested and agreed to by the Ministry, the Committee desire that provision on lines of Section 195(2) of Income Tax Act be inserted in the clause for non-residents as it would be impossible for the deductor to know the total income of non-resident and could be harsh where payment to non-resident is tax protected.**

Clause 200 – No deduction of tax in certain cases

16.32 Clause 200 provides for cases and circumstances where no TDS is required to be made. This also includes threshold limit in some cases.

16.33 Clause 200 reads as under :

> "Notwithstanding anything in section 195, no tax shall be deducted at source —

(*A*) where the payee is a resident, from the following, namely:—

(*a*) any payment, other than salary, made by an individual or a Hindu undivided family, if the individual or the Hindu undivided family is not liable to get the accounts audited under section 88 for the financial year immediately preceding the financial year in which the payment is made;

(*b*) any interest payable on any security,—

(*i*) of the Central Government or a State Government; or

(*ii*) issued by a company, if such security is in dematerialised form and is listed on a recognised stock exchange in India;
(*c*) any interest on debenture payable to an individual, if -

(*i*) the debentures are issued by a widely held company;

(*ii*) the debentures are listed in a recognised stock exchange in India; and

(*iii*) the aggregate amount payable during the financial year does not exceed five thousand rupees;

(*d*) any interest on time deposits (being deposits repayable on the expiry of fixed periods, excluding recurring deposits) payable, if—

(*i*) the time deposits are made with a banking company or a cooperative bank or a housing-finance public company; and

(*ii*) the aggregate amount payable by the payer, being a branch of the bank or company during the financial year, does not exceed ten thousand rupees;

(*e*) any other interest payable if the aggregate amount of the payments during the financial year does not exceed five thousand rupees;

(*f*) any interest payable to,—

(*i*) any banking company;

(*ii*) any co-operative bank;

(*iii*) any financial corporation established by or under a Central or State or Provincial Act;

(*iv*) any insurer;

(*v*) any mutual fund; or

(*vi*) any institution, association or body, or class of institutions, associations or bodies, which the Central Government may, for reasons to be recorded in writing, notify in this behalf;

(*g*) any interest payable by a firm to a partner of the firm;

(*h*) any interest payable in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf;

(*i*) any interest payable in respect of deposits (other than time deposits) with a banking company or a co-operative bank;

(*j*) any interest payable by the Central Government under any provision of this Code or the Income-tax Act, 1961, or the Wealth-tax Act, 1957, as they stood before the commencement of this Code;

(*k*) any interest payable on the amount of compensation awarded by the Motor Accidents Claims Tribunal, if the aggregate of the amounts of such interest paid, or credited, during the financial year does not exceed one lakh rupees;

(*l*) any amount payable on maturity, or redemption, of a zero coupon bond;
(*m*) any payment for carriage of goods by road transport if the payee furnishes his permanent account number to the payer;

(*n*) any payment to a contractor in respect of works contract, service contract, advertising, broadcasting and telecasting, supply of labour for carrying out any works, or service, contract or carriage of goods or passengers by any mode of transport, other than by railways, if —

(*i*) the amount of any payment during the financial year does not exceed thirty thousand rupees; and

(*ii*) the aggregate amount of the payments during the financial year does not exceed seventy-five thousand rupees;

(*o*) any payment of commission or brokerage, if the aggregate amount of the payments during the financial year does not exceed five thousand rupees;

(*p*) any payment of rent, if the aggregate amount of the payments during the financial year does not exceed one lakh eighty thousand rupees;

(*q*) any payment of compensation on compulsory acquisition of immovable property, if the aggregate amount of the payments during the financial year does not exceed two lakh rupees;

(*r*) any amount payable by way of distribution of income by a mutual fund in respect of a fund, not being an equity oriented fund, to any unit holder, if,—

(*i*) such unitholder is not a company; and

(*ii*) the aggregate amount of the payment to the unitholder during the financial year does not exceed ten thousand rupees;

(*s*) any amount payable, by a life insurer to any policy-holder, if,—

(*i*) such policy-holder is not a company;

(*ii*) the policy is other than a policy referred to in clause (*d*) or clause (*e*) of sub-section (*3*) of section 59; and

(*iii*) the aggregate amount of the payment to the policy-holder during the financial year does not exceed ten thousand rupees;

(*B*) where the payee is a non-resident, being a foreign institutional investor, on any payment made to it as a consideration for sale of securities listed on a recognized stock exchange".

16.34 **Existing provision in the Income Tax Act, 1961**

"The provision has been consolidated in the DTC.

194H. Explanation.

"Commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

194J. Proviso.

Provided that no deduction shall be made under this section —

(B) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(i) thirty thousand rupees, in the case of fees for professional services referred to in clause (a), or

(ii) thirty thousand rupees, in the case of fees for technical services referred to in 82a[clause (b), or]

(iii) thirty thousand rupees, in the case of royalty referred to in clause (c), or

(iv) thirty thousand rupees, in the case of sum referred to in clause (d).
196. Interest or dividend or other sums payable to a Mutual Fund specified under clause (23D) of section 10 is not liable for TDS.

16.35 Several suggestions as received through written memorandum by various institutions / organisations are given as under :

(i) DTC may provide threshold limit for deducting TDS on income from professional or technical fees, royalty, non-compete fees etc. The same should be provided on the lines of section 194J of the Income-tax Act to avoid cumbersome process of TDS on very small amounts. It is also suggested that no TDS should be made on such payments if they are below 100000. **(ICSI).**

(ii) The threshold limit for TDS on interest payments on time deposits is Rs. 10000. This limit may be increased to Rs. 100,000/-. Such relief would substantially reduce the compliance burden of banks. **(Indian Banks' Association and Bombay Chamber of Commerce and Industry).**

(iii) Under section 194H of the IT Act, payment of commission/brokerage in respect of transaction of securities are not subject to TDS. Subjecting such payments to TDS under DTC would upset the entire payment settlement cycles of the stock exchanges.

Therefore, appropriate exemption for such transactions be provided in clause 200. **(Indian Banks' Association (IBA).**

(iv) At present u/s 196 of IT Act, any income received by a mutual fund is not liable to TDS since mutual funds are not liable to tax. However, DTC provides such exemption only on interest payments to a mutual fund under 200(A)(f). This will create cash flow issues for mutual funds/investors.

Therefore, any income received by the mutual fund should not be subjected to TDS as presently provided under ITA. **(Expert).**

(v) Logically TDS provision should be applicable only when the deductee has income chargeable to tax under the DTC. Hence if the entity is exempt from tax or if the income is not liable to tax in the hands of deductee, then there should not be any deduction at source. For example, mutual funds, a venture capital company, a venture capital fund etc. **(Bombay Chartered Accountants' Society).**

(vi) Interest upto Rs. 10000 on deposit in banks in a year will not attract TDS provision. This may be raised to Rs. 12000 in a year meaning there by Rs. 1000 per month.

The limit for any other interest in sub-clause (e) in the said section be also be increased upto Rs. 12000 in a year. **(COSIA)**

(vii) In view of higher threshold limit for income not chargeable to tax and considering the inflation, it is suggested that threshold limits for various payments to residents subjected to TDS should be increased as under :

Sec	**Nature of payment**	**Proposed threshold limit under DTC**	**Recommended threshold limit**
200(A) (c)(iii)	Interest on debentures payable to individual	5000	20000
200(A) (d)(ii)	Interest on time deposit with banking company	10000	20000
200(A) (e)	Any other interest	5000	20000
200(A) (n)	Payment to contractor	30000(for a single transaction)	50000 (for a single transaction)
		75000(for aggregate of transaction during the year)	100000 (for aggregate of transaction during the year)
200(A) (o)	Commission or brokerage	5000	20000
	fees for professional/technical services	Nil	30000 (current limit under ITA)
	Payment for royalty/non-compete fee	Nil	30000 (current limit under ITA)

(viii) The gross earnings include some controversial items like the amount received as reimbursement of any expenditure incurred, amount received from employees as their welfare, amount received as advance, security deposit or otherwise from the long term leasing or transfer of any business asset.

TDS will become applicable on the aforesaid amounts although there is no income which is not equitable under law alongwith the consequential implications in terms of harassment in claiming refunds/ adjustments as well as blocking or working capital. The inclusion of the above mentioned items needs to be reexamined. **(The Bengal Chamber of Commerce and Industry).**

16.36 Response of the Ministry in respect to all the above said suggestions are given as under :

(i) Threshold limit in line with section 194J of Income-tax Act **will be considered**. This limit cannot be increased to Rs.1 lakh as the current limit is on single payment and has been revised recently.

(ii) TDS is not only a method of tax collection but also serves as a vital tool to collect information. The limit has been revised recently. The lower threshold limit prevents evasion of tax by opening time deposits in different bank accounts.

(iii) Payment of brokerage to a stock broker in respect of transactions in securities is not subject to tax. Similar provision **will be considered** in DTC.

(iv) & (vii) Payment to exempt entities are not subject to TDS under the provisions and instructions issued under the Income-tax Act. Under clause 197(5) the Board is empowered to prescribe the circumstances and cases in which the Assessing Officer can issue certificate of lower or no deduction of tax. A provision for enabling the Board to exempt a class of persons from TDS **will be considered** in the DTC.

(v)& (vi) TDS is not only a method of tax collection but also serves as a vital tool to collect information. The limit has been revised recently. Lower threshold limit prevents evasion of tax by opening time deposits in different bank accounts.
(viii) There is no residual clause for deduction of TDS on any other income where the payee is a resident. Therefore, any item on which specifically TDS is not provided for and the payee is a resident, TDS would not be required. In case the amounts like reimbursement of expenses are included in the specified payment subject to TDS, the payee will not be affected as TDS rates for residents are lower than the full rate of taxation. Alternatively, the payee can also approach the tax authorities for lower deduction of tax.

16.37 **As suggested and agreed to by the Ministry necessary modifications may be suitably incorporated in the Bill to provide threshold limit for deducting TDS on income from professional or technical fees, royalty, non-compete fees etc. on the lines of Section 194J of the existing IT Act to avoid cumbersome process of TDS on very small amounts.**

16.37A **The Committee also desire that higher threshold exemption limit should be fixed while deducting TDS on fixed deposits particularly in case of senior citizens.**

16.38 **The Committee feel that subjecting payment of concession/brokerage in respect of transaction of securities to TDS in the**

Bill would upset the entire payment settlement cycle of stock exchanges and therefore desire that, as agreed to by the Ministry, suitable modifications may be made in the clause to be in line with the existing provision of IT Act which exempts such transactions.

16.39 **The Committee expect that as agreed by the Ministry, suitable modification in the Bill be made for enabling the Board for exempting a class of persons from TDS.**

16.40 **The Committee would like to reiterate their earlier recommendation for a suitable threshold limit of TDS for fixed deposit.**

16.41 **The Committee desire that, as suggested, inclusion of certain items viz. the amount received as reimbursement of any expenditure incurred, amount received from employee as their welfare, amount received as advance, security deposit or otherwise from the long term leasing or transfer of any business asset in the gross earnings be reviewed thoroughly and the clause be modified accordingly.**

Clause 200(A)(f)

16.42 As given above.

16.43 **Existing provision in the Income Tax Act, 1961**

Section 194A given above.

16.44 On this clause, Indian Banks' Association (IBA) in their written memorandum suggested as follows :

(i) Besides interest income, banks also receive other charges from customers and it is administratively not possible for banks to deduct tax as well as collect TDS certificate from customers. For TDS purposes, DTC covers even trade and treasury transactions like payment towards purchase of govt. securities, foreign exchange, payment of brokerage or custody charges. Therefore, it is suggested that in clause (f) the words "any interest" should be replaced by "any income payable".

(ii) The provisions of 200(A)(f) should also be extended to Indian branches of foreign banks.

(iii) In clause (f) add "Non-banking Finance company" as NBFC's also receive interest from lending and it is essential that exemption from TDS be extended to them.

16.45 Comments of the Ministry on each of the above said suggestions are as follows :

(i) The provisions of DTC are in line with the current provisions of Income-tax Act which provide exemption from TDS to these institutions only in respect of receipt of interest income.

(ii) The provisions of 200A(f) are applicable where payee is a resident. For nonresidents, the scheme of taxation including collection by way of TDS is different and exemptions granted to a resident cannot be replicated for a non-resident.

(iii) The enabling power to provide exemption to a class of institutions under clause 200(A)(f) is already provided.

16.46 **The Committee agree with the view of the Ministry that exemption from TDS to banks etc. are only in respect of receipt of interest income; and clause 200(A)(f) of Bill is applicable where payee is a resident and enabling power to provide exemption to a class of institutions is already provided thereunder.**

Clause 201 – Credit for tax deducted

16.47 Clause 201 reads as under :

201. (1) All sums deducted in accordance with the provisions of this Chapter shall, for the purposes of computing total income of a deductee be deemed to be the income received.

(2) Any deduction made in accordance with the provisions of this Chapter and paid to the credit of the Central Government shall be treated as a payment of tax on behalf of the person in respect of whom the deduction was made.

(3) For the purposes of giving credit in respect of tax deducted, the Board may prescribe—

(a) the procedure for giving credit to the deductee, or any other person;

(b) the financial year for which such credit may be given; and

(c) any other matter connected therewith.

16.48 **Existing provision in the Income Tax Act, 1961**

Bar against direct demand on assessee.

205. Where tax is deductible at the source under 27[the foregoing provisions of this Chapter], the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

16.49 Bombay Chartered Accountants' Society in their written memorandum stated that presently section 205 of the IT Act specifically puts a bar against direct demand on assessee to the extent to which tax has been deducted from relevant income. However, no such provision is there in the DTC. They have, therefore, suggested that a provision on the lines of sec 205 of the ITA must be made in DTC otherwise provisions relating to TDS would become totally unfair and unjust.

16.50 The Ministry while accepting the above said suggestion stated that it **will be considered**.

16.51 **The Committee desire that as agreed to by the Ministry, the suggestion that suitable modification on the lines of Section 205 of IT Act may be made in the Bill thereby putting a bar against direct demand on assessee to the extent to which tax has been deducted from relevant income. Further, the moment tax is deducted at source, there should be an on-line mechanism to give TDS credit to the taxpayer.**

COLLECTION OF TAX AT SOURCE

Clause 204 – Interpretations under sub-chapters A and B.

16.52 The clause gives definition of various terms relevant for the Chapter.

204. (1) In Sub-chapter A—

(e) "works contract'' shall include contract for- manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer and not from any other person.

16.53 **Existing provision in the Income Tax Act, 1961**

194C. Explanation.

(iv) "work" shall include—

(a) advertising;

(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(c) carriage of goods or passengers by any mode of transport other than by railways;

(d) catering;

(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

16.54 Madras Chamber of Commerce and Industry in their written suggestions suggested as follows :

(i) The Finance Act 2009 brought about changes to TDS system u/s 194C of the ITA whereby it was provided that the value of material should be excluded for TDS on payments for job work contracts. Such corresponding provisions are not found in the DTC. The omission must be rectified.

(ii) Definition of terms.

Several important terms like commission, brokerage, rent etc. have not been taken under the DTC. Such definitions are present under the IT Act. The DTC should continue to define such terms to avoid any unnecessary litigation in the future. Even professional services are not defined.

16.55 The Ministry in their replies to the above said suggestions stated that both the suggestions **will be considered** for redrafting.

16.56 **The Committee feel that Section 194C of the IT Act provides that the value of material should be excluded for TDS on payments for job work contracts but such corresponding provisions are not provided in the Bill. The Committee therefore desire that as suggested and agreed to by the Ministry, the similar provisions may be suitably incorporated in the Bill to be in line with existing IT Act.**

16.57 **The Committee further note that certain terms defined in the existing IT Act have not been defined in the DTC Bill and desire that such terms**

should be defined and suitably incorporated in the Bill to avoid unnecessary litigation.

CHAPTER - XVII – INTERPRETATIONS AND CONSTRUCTIONS

Clause 314 - Interpretations in the Code

Definition of accountant

17.1 Clause 314(2) of the Direct Taxes Code Bill, 2010 define "Accountant" as follows:

> "Accountant" –means
>
> (a) a chartered accountant within the meaning of the Chartered Accountants Act, 1949, and
>
> (b) any person who is entitled to act as an auditor of companies under sub-Clause (2) of Clause 226 of the Companies Act, 1956.

17.2 Clause 182(3) of the Direct Taxes Code Bill, 2010 define "Accountant member" as follows:

> "An accountant member shall be a person—
>
> (a) who has for at least fifteen years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949; or
>
> (b) who has been a member of the Indian Revenue Service and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years".

17.3 Provision as per the existing Act:

> *288(2) Explanation*.—In this section, "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 2266 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State. Provides for computation of income from business. Income of distinct and separate business to be computed separately.

17.4 The Committee has received representations from ICWAI and ICSI demanding changes in the definition of accountant and accountant member. ICWAI has suggested that since these are exclusive domain of Cost Accountants as per sec 2(2) of the Cost and Works Accountants Act, 1959, the Cost Accountants should be included in the definition of Accountants as per Clause 314(2) of the DTC Bill, 2010. Segmental reporting including ascertainment of

cost and profitability should be introduced to ensure correctness of product-wise, unit-wise profitability as per clause 31(2) which should be certified by Cost Accountant in practice as per meaning of Cost and Works Accountants Act, 1959.

17.5 ICSI has suggested that "Company Secretary within the meaning of the Company Secretaries Act, 1980(Central Act 56 of 1980)" in the definition of "Accountant" and "Accountant Member" so as to give them the same privilege as given to the Chartered Accountants.

Specific entry in respect of Company Secretary under Clause 304(3) on "Appearance by Authorized representative" or in other applicable provisions be made to define Authorised Representative specifically.

The Institute of Company Secretaries of India is a premier professional body established under an Act of Parliament, i.e., the Company Secretaries Act, 1980. Company Secretary, a competent professional comes in existence after exhaustive exposure provided by the Institute through compulsory coaching, examinations, rigorous training and continuing education programmes, and is governed by the Code of Conduct contained in the Company Secretaries Act, 1980.

The curriculum of Company Secretaryship Course includes, *inter-alia*, detailed study of Direct Taxation, Indirect Taxation and Financial Accounting. Thus, vast exposure is provided to the Company Secretaries in the areas of taxation and accounts, enabling them to acquire proficiency in taxation and other related subjects.

Secretary of a company has been recognized as a key managerial personnel of the company under the Companies Bill, 2011 and principal officer of the company responsible for its affairs under a host of legislations including Companies Act, 1956, Customs Act, 1962, Central Excise Act, 1944, etc. This Code also recognizes Secretary as Principal Officer [vide Clause 314(200)].

The Company Secretaries in Practice have been recognized to act as Authorized Representative before -

a) The Customs, Excise and Service Tax Appellate Tribunal under the Customs Act, 1962 [Clause 146A(2)(d)] read with Customs (Appeals) Rules, 1982 [Rule 9(c)] and The Central Excise Act, 1944 [Clause 35Q (2)(c)] read with Central Excise (Appeals) Rules, 2001[Rule12(c)].

b) Service Tax vide Authority for Advance Ruling (Procedures) Rules, 2003-Rule 2(d)(i)

c) Income-Tax Act, 1961 vide Clause 288(2)(v) read with Rule 50(2A) of the Income Tax Rules,1962

d) Securities Appellate Tribunal vide Clause 15V of the SEBI Act, 1992

e) Central Electricity Regulatory Commission vide the Central Electricity Regulatory Commission (Miscellaneous Provisions) Order, 1999-Explanation to Order No.6(i)

f) Telecom Regulatory Appellate Tribunal vide the Telecom Regulatory Authority of India Act, 1997-Clause 17

g) National Company Law Tribunal vide Clause 10GD

h) Competition Commission of India Competition Act, 2002 – Clause 35(b)

i) Wealth Tax Authorities vide Wealth Tax Rules – Rule 8A(7)

j) State VAT Legislations.

k) Reserve Bank of India – Diligence Report for Banks Vide Circular DBOD No. BP.PC. 46/08.12.001/2008-09

l) SEBI – Internal Audit of Stock Brokers / Trading Members / Clearing members Vide Circular No. MRD/DMS/CIR/-29/2008

17.6 The Ministry has replied that the definition of accountant as appearing in the DTC is the same as that in the IT Act. An accountant for the purposes of tax matters is required to deal with all financial matters and audit all financial ledgers, books, records and statements of a company or firm etc whereas a cost accountant deals primarily with estimates of cost for projects and monitoring the project to ensure that these are within the budget. Therefore, a cost accountant may not have the expertise to deal with all the financial statements and matters . Accordingly the suggestion is not acceptable.

17.7 Further, the question here is not of giving privilege to any particular profession rather the most suited profession for dealing with the matters relating to direct taxes has to be assigned the work. Accordingly, the suggestion is not acceptable.

17.8 Under clause 304(3) (F) of the DTC, the Board may prescribe any person with specified educational qualification to act as an authorized representative. The same procedure is followed under the current Act. Accordingly, this will be considered at the time of framing of subordinate legislation.

17.9 **The Committee observe that the Ministry's reasoning for non-inclusion of related professionals in the definition of accountant is a very strict construction of the term. In the view of the Committee, the suggested amendment may provide the Small and Medium Enterprises (SMEs) a wider and cost effective scope for selection of professionals and will be an important initiative towards simplified tax compliance regime. The Ministry may therefore re-consider the suggestion to widen the scope of the definition of "accountant".**

17.10 **Definition of 'Business Connection'**

314. (*40*) "business connection" in relation to a non-resident shall include a permanent establishment;

Provision as per the Income Tax Act, 1961
Section 9. (1) Explanation *2.*—For the removal of doubts, it is hereby declared that "business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident,—

(*a*) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the nonresident; or

(b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
(*c*) habitually secures orders in India, mainly or wholly for the nonresident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident:
Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business :

Provided further that where such broker, general commission agent or any other agent works mainly or wholly on behalf of a non-resident (hereafter in this proviso referred to as the principal non-resident) or on behalf of such

non-resident and other non-residents which are controlled by the principal non-resident or have a controlling interest in the principal non-resident or are subject to the same common control as the principal non-resident, he shall not be deemed to be a broker, general commission agent or an agent of an independent status.

17.11 On this sub-clause, the following suggestion has been received:

a. The definition of 'business connection' can be done away with and nexus in India can be ascertained with respect to the concept or PE which should be exhaustively defined. (Bombay Chartered Accountants)

b. The inclusion of the term 'permanent establishment' in the definition of the term 'business connection' should be removed, if not, then a threshold limit should be prescribed in relation to the various situations proposed to be included within the definition of Permanent establishment.

c. Specific exclusion should be provided for activities which are preparatory or auxiliary in nature. (Bombay Chamber of Commerce)

17.12 The Ministry have furnished their replies as under :

Business connection includes permanent establishment. Accordingly, the term has been defined to indicate the same. The term 'permanent establishment' has been defined in clause 314(183)in an exhaustive manner. The Double Taxation Avoidance Agreements also contain an article(clause) on Permanent Establishment(PEs) wherein the types of PE to be recognized for taxation of business income of a non resident in the two contracting States is enlisted. The time period for which a particular activity should exist in a year to be recognized as PE for taxation of business income of a non resident is negotiated by the two countries to ensure their taxing rights taking into account the nature of activity. Accordingly, the time period for a service PE or construction PE varies from treaty to treaty. It is a settled principle that scope of taxation under domestic law should be wider than that of treaty.

17.13 **The Code proposes to have inclusive definition of Permanent Establishment (PE). The Committee recommend that as far as possible definitions should be expressly stated as it provides certainty to the definition and its scope for taxability.**

Definition of 'Employer'

314(88) "employer" means a person who controls an individual under an express or implied contract of employment and is obliged to compensate him by way of salary;

17.14 This is not provided in the existing Act

17.15 Suggestion received:

As per section 314(88) of the DTC, employer means a person who controls an individual under an express or implied contract of employment and is obliged to compensate him by way of salary. This definition could result in TDS problems especially in case of intra company movement and/ or cross border movement of personnel.

17.16 Ministry replies:

Will be considered

17.17 **The Committee recommend that the definition of 'employer' may be modified, as agreed to by the Ministry, so as to take care of problems arising out of TDS, especially when there is intra-company movement or cross-border movement of personnel.**

Definition of Investment Asset

(*141*) "investment asset" means,—

(*a*) any capital asset which is not a business capital asset;

(*b*) any security held by a Foreign Institutional Investor;

(*c*) any undertaking or division of a business;

17.18 The provision does not exist in the Income Tax Act.

17.19 The Committee has received various suggestions from the stakeholders requesting that the provisions relating to classification of the income of FIIs as capital gains should be omitted. FIIs should not be required to withhold tax from payment made towards brokerage or commission.

17.20 The Ministry has replied that this classification has been made to reduce large scale litigation. Therefore the suggestion is not acceptable. Under IT Act, payment of brokerage by an assessee, whether an FII or not, to a stock broker in respect of transactions in securities is not subject to TDS. Provisions on similar lines will be considered in DTC.

17.21 **The Committee note that deeming all income of Foreign institutional investors from sale of securities as capital gain artificially recharacterizes their income. The classification of an item of income to be taxed under the Code should be based on the nature of income. However, the proposed classification under the Code ignores key factors like volume, frequency and size of sale and purchase transactions, pattern of trading activity, etc. which have been followed by the Courts in determining the nature of income from sale of securities. Accordingly, the Committee recommend that the security held by foreign institutional investor should not be included in the definition of investment asset.**

17.22 **DEFINITION OF 'PERMANENT ESTABLISHMENT'**

314 (183) "permanent establishment" means a fixed place of business through which the business of a non-resident assessee is wholly or partly carried on and—

(a) includes—

(i) a place of management;

(ii) a branch;

(iii) an office;
(iv) a factory;

(v) a workshop;

(vi) a sales outlet;

(vii) a warehouse in relation to a person providing storage facilities for others;

(viii) a farm, plantation other place where agricultural, forestry, plantation or related activities are carried on;

(ix) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

(x) a building site or construction, installation or assembly project or supervisory activities in connection therewith;

(xi) furnishing of services, including consultancy services, by the assessee through employees or other personnel engaged by him for such purpose; and

(xii) an installation or structure or plant or equipment, used for exploration or for exploitation of natural resources; and

(b) deemed to include—

(i) a person, other than an independent agent being a broker, general commission agent or any other agent of independent status acting in the ordinary course of his business, acting in India on behalf of an assessee, if such person—

(A) has and habitually exercises in India an authority to conclude contracts on behalf of the assessee, unless his activities are limited to the purchase of goods or merchandise for the assessee;

(B) habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the assessee; or

(C) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident;

(ii) the person acting in India on behalf of an assessee engaged in the business of insurance, through whom the assessee collects premia in the territory of India or insures risks situated therein;

(iii) a substantial equipment in India which is being used by, for or under any contract with the assessee;

17.23 Provision as per existing Act:

92F (iiia) “permanent establishment”, referred to in clause (iii), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;

17.24 The following suggestions have been received on ‘permanent establishment’:

a) The term ”substantial” used in clause(b)(iii) with reference to an equipment should be clarified.

b) DTC should provide that mere existence of a subsidiary in India of a foreign company should not constitute a PE of the foreign company in India.

c) It should be provided that when the activities of an agent of an independent status are devoted wholly or almost wholly on behalf of a foreign enterprise and the transactions between the said agent and that enterprise are made under arm’s length conditions, the agent should be considered an agent of independent status within the meaning of this paragraph. (Bombay Chartered Accountants)

(d) The definition does not mention any threshold limit. Therefore the amendment of the definition to include:-

1. Threshold limit should be prescribed for constituting a service Permanent establishment, and construction permanent establishment.

2. Specific exclusion should be provided for activities which are preparatory or auxiliary in nature. (FICCI)

17.25 Ministry’s reply to the suggestions are as follows:

“Substantial” is a term used in DTAAs. Hence, there is no requirement of any clarification.

Mere existence of a subsidiary will not fasten any tax liability on a non-resident assessee unless he carries on a business using the premises or personnel of the subsidiary.

The definition of the term “permanent establishment” is based on the definition widely accepted across various countries. 314(183)(b)(i) already provides that a person acting in India on behalf of an non-resident assessee shall be deemed to constitute a PE if he habitually exercises an authority to conclude contracts on behalf of the non-resident assessee or habitually secures orders in India for the non-resident. However, such

person does not include an independent agent, being a broker, general commission agent or any other agent of independent status.

The term has been defined in a comprehensive manner in the DTC, 2010. The Double Taxation Avoidance Agreements also contain an article (clause) on Permanent Establishment (PEs) wherein the types of PE to be recognized for taxation of business income of a non resident in the two contracting States is enlisted. The time period for which a particular activity should exist in a year to be recognized as PE for taxation of business income of a non resident is negotiated by the two countries to ensure their taxing rights taking into account the nature of activity. Accordingly, the time period for a service PE or construction PE varies from treat to treaty. It is a settled principle that the scope of taxation under the domestic law is wider than that under DTAAs.

17.26 **The Committee desire that certain ambiguities in the definition of 'Permanent Establishment' (PE) such as 'substantial equipment in 314(183) b(iii) and mere existence of a subsidiary in the country constituting PE should be amply clarified. Suitable thresholds, wherever required, may be incorporated to bring greater clarity to the definition.**

17.27 314 (*191*) "perquisite" means,—

(*a*) the amenity, facility, privilege or service, whether convertible into money or not, provided directly or indirectly to an employee by the employer, whether by way of reimbursement or otherwise, being—

(*i*) the value of any accommodation computed in such manner as may be prescribed;

(*ii*) any sum payable to effect an assurance on life or to effect a contract for an annuity;

(*iii*) the value of any sweat equity share allotted or transferred, as on the date on which the option is exercised by the employee; or

(*iv*) the value of any obligation which, but for payment by the employer, would have been payable by the employee, computed in such manner as may be prescribed;

(*b*) the value of any amenity, facility, privilege or service, other than those referred to in sub-clause (*a*) computed in such manner as may be prescribed but does not include,—

(*i*) the value of any medical treatment provided to an employee or any member of his family in a hospital maintained by the employer;

(*ii*) any sum paid by an employer in respect of any expenditure actually incurred by an employee on medical treatment of himself or his family members in any hospital maintained by the Government or any local authority or any other hospital approved by the Government;

(*iii*) any sum paid by an employer in respect of any expenditure actually incurred by an employee on medical treatment of himself or his family members with regard to specified diseases, in any hospital approved by the Chief Commissioner in accordance with such guidelines as may be prescrbed;

(*iv*) any premium paid or reimbursed by an employer to effect or to keep in force an insurance on the health of an employee under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority;

(*v*) any sum paid by an employer in respect of any expenditure actually incurred by an employee on medical treatment of himself or his family members [other than the expenditure on treatment referred to in items (*i*), (*ii*) and (*iii*)] to the extent it does not exceed fifty thousand rupees in a financial year;

(*vi*) any sum paid by an employer in respect of any expenditure actually incurred by an employee outside India on medical treatment of himself or his family members (including expenditure incurred on travel and stay abroad) if,—

(A) the expenditure does not exceed the amount permitted by the Reserve Bank of India; and
(B) the income from employment excluding the amount of expenditure referred to in this sub-clause of such employee does not exceed five lakh rupees in the financial year;

17.28 Provision as per existing Act

17. (2) “perquisite” includes—

(i) the value of rent-free accommodation provided to the assessee by his employer;

(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer; an employee who is a director thereof;
(iii) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee;

(iv) any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund or a Deposit-linked Insurance Fund established under section 3G of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or, as the case may be, section 6C of the Employees’ Provident Funds and Miscellaneous

Provisions Act, 1952 (19 of 1952), to effect an assurance on the life of the assessee or to effect a contract for an annuity;

(v) the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee;

(vi) the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees; and

(vii) the value of any other fringe benefit or amenity as may be prescribed:

Provided that nothing in this clause shall apply to,—

(i) the value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer;

(ii) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family—

(a) in any hospital maintained by the Government or any local authority or any other hospital approved9 by the Government for the purposes of medical treatment of its employees;

(b) in respect of the prescribed diseases or ailments, in any hospital approved by the Chief Commissioner having regard to the prescribed guidelines :

Provided that, in a case falling in sub-clause (b), the employee shall attach with his return of income a certificate from the hospital specifying the disease or ailment for which medical treatment was required and the receipt for the amount paid to the hospital;

(iii) any portion of the premium paid by an employer in relation to an employee, to effect or to keep in force an insurance on the health of such employee under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for the purposes of clause (ib) of sub-section (1) of section 36;

(iv) any sum paid by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under subsection (1) of section 3 of the Insurance Regulatory and Develop- 80D;

(v) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his

family other than the treatment referred to in clauses (i) and (ii); so, however, that such sum does not exceed fifteen thousand rupees in the previous year;

(vi) any expenditure incurred by the employer on—

(1) medical treatment of the employee, or any member of the family of such employee, outside India;

(2) travel and stay abroad of the employee or any member of the family of such employee for medical treatment;

(3) travel and stay abroad of one attendant who accompanies the patient in connection with such treatment, subject to the condition that—

(A) the expenditure on medical treatment and stay abroad shall be excluded from perquisite only to the extent permitted by the Reserve Bank of India; and

(B) the expenditure on travel shall be excluded from perquisite only in the case of an employee whose gross total income, as computed before including therein the said expenditure, does not exceed two lakh rupees;

(vii) any sum paid by the employer in respect of any expenditure actually incurred by the employee for any of the purposes specified in clause (vi) subject to the conditions specified in or under that clause :

Provided further that for the assessment year beginning on the 1st day of April, 2002, nothing contained in this clause shall apply to any employee whose income under the head “Salaries” (whether due from, or paid or allowed by, one or more employers) exclusive of the value of all perquisites not provided for by way of monetary payment, does not exceed one lakh rupees.

17.29 The Committee has received the following suggestions to amend the definition of perquisite:-

17.30 Clause 314(191)(b)(iv)may be reworded as under:-

> "any premium paid or reimbursed by an employer to effect or to keep in force an insurance on the health of an employee OR ANY MEMBER OF HIS FAMILY under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority".
>
> The provisions of the DTC may be amended to include retired employees for providing the tax benefit on medical reimbursements/ hospitalization expenditure in approved hospitals. Further, in respect of treatment for terminal illnesses like cancer, kidney failure, etc. the expenses should be fully allowed without any limit if supported by proper prescriptions and bills, since the cost of routine medicines and treatment have become very expensive.

17.31 The Ministry has replied that The provision has been rationalized by aligning the same with the provisions of clause 35 of the DTC wherein the employer is eligible for deduction only for the premium paid on the health of the employee.

17.32 Income under the head "Income from employment" means gross salary as reduced by all deductions specified in clause 23.

17.33 Clause 22 of the DTC provides that gross salary shall be the amount of salary due, paid or allowed whichever is earlier, to a person in a financial year by or on behalf of his employer or **former employer**. The term "salary" in turn includes perquisites and profit in lieu of salary. Thus salary includes salary from former employer as well. Therefore, in view of the provisions as proposed in the DTC, no amendment as sought for inclusion of retired persons is required. Further with regard to medical reimbursements and exclusion of medical expenses from the purview of perquisites, the provisions have been rationalized.

17.34 **The Committee note that in the existing tax regime, premium paid or reimbursed by an employer to keep in force an insurance policy on the health of family members of an employee, was excluded from the definition of perquisite. The Committee do not favour the reasoning of the Ministry that reimbursement of medical insurance premium for family members of employee has been included as perquisite to align with Clause 35 of the Code. Since health costs in India are rising and insurance coverage is**

rather low, this provision may cause financial hardship to employees. The Committee, therefore recommend exclusion of this provision from the definition of perquisite. Furthermore, the Committee would also recommend that ESOPs, as a perquisite, should be taxable only at the time of sale / alienation and not at the time of vesting.

17.35 **314 Definition of 'Royalty'**

220) "royalty" means consideration (including any lump-sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

(*a*)the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, trade mark, secret formula, process, or similar property;

(*b*)the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula, process, trade mark, or similar property;

(*c*)the use of any patent, invention, model, design, secret formula, process, trade mark, or similar property;

(*d*)the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(*e*) the use or right to use of any industrial, commercial or scientific equipment including ship or aircraft but excluding the amount, referred to in item numbers *7 and 8* of the Table in the Fourteenth Schedule, which is subjected to tax in accordance with the provisions of that Schedule;

(*f*) the use or right to use of transmission by satellite, cable, optic fibre or similar technology;

(*g*) the transfer of all or any rights (including the granting of a licence) in respect of—
(*i*) any copyright of literary, artistic or scientific work;

(*ii*) cinematographic films or work on films, tapes or any other means of reproduction; or

(*iii*) live coverage of any event;

(*h*)the rendering of any services in connection with the activities referred to in sub-clauses (*a*) to (*g*).

17.36 **Provision as per the existing Act**

Explanation 2.—For the purposes of this clause, “royalty” means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gains”) for—

(*i*) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*ii*) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*iii*) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*iv*) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;

[(*iva*) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;]

(*v*) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or

(*vi*) the rendering of any services in connection with the activities referred to in sub-clauses (*i*) to [(*iv*), (*iva*) and] (*v*).

17.37 The following suggestions have been made on this issue:

It is recommended that the word ‘the right to use of transmission by satellite, cable, optic fiber or similar technology’ appearing in the definition of royalty should be deleted. This is not ‘royalty as existing in the international tax practices. Broadband / date connectivity expenses are in the nature of payment for commercial services, which do not bear the nature of usage of any rights. Judicial precedents adhering to this rationale should not be altered by the code. (CII)

Definition of royalty – the definition of ‘royalty’ under the DTC should be changed to include the term secret formula or process as against secret

formula, process currently proposed in the DTC. The term process should be defined in the DTC. (Bombay Chambers)

The exclusion from the definition of royalty under the ITA should also be prescribed under the definition of royalty under DTC. The exclusion from the definition of royalty would ensure parity with the present definition of royalty under the ITA.

It is suggested that the definition of royalty should be amended so as to clarify that any kind of service charges are not intended to be included in the definition. (Bombay Chartered Accountants Society)

Reference to item no. 17 and 18 of table in the fourteenth schedule be replaced by item no. 7 &8.

17.38 The Ministry have submitted their replies as under:

The scope of the term 'royalty' has been widened in the DTC to cover payments made for transmission by satellites, cables etc. This read with source rule under clause 5(2)(f)&(g) will provide clarity in taxation of payments to non-residents in respect of use of satellites, cable etc for the purpose of business in India or earning income from any source in India. Similar is the case for payment made to non-residents for use of process. As regards exception under Income-tax Act for cinematographic films, the current market situation does not justify any exception from the source rule.

The reference in clause 314(220) is already to item numbers 7 and 8 of the Fourteenth Schedule. Therefore no change is required.

17.39 **The Committee agree with the Ministry's proposal to expand the scope of definition of "royalty" in view of the prevailing market situation.**

Definition of 'Sikkimese'

17.40 314(*233*) "Sikkimese" means,—

(*a*) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (in this clause referred to as the "Register of Sikkim Subjects"), immediately before the 26th day of April, 1975;
(*b*) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No.26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or
(*c*) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of

such individual's father or husband or paternal grandfather or brother from the same father has been recorded in that register;

17.41 The Committee has received a suggestion that an additional sub clause (d) may be incorporated in the definition of Sikkimese as follows:

> "(d) Any other individual, who has and/or whose father or husband or grandfather or brother has been a resident in Sikkim immediately prior to the date the Sikkim Subject Regulation 1961 was enacted."

17.42 The Ministry has however, declined to incorporate the above suggestion.

17.43 **The Committee suggest that the Ministry may consider for inclusion an additional sub-clause (d) as suggested above in clause 314 (233) relating to the definition of "Sikkimese", in order to make it more comprehensive.**

New Delhi
6 March, 2012
16 Phalguna, 1933 (Saka)

YASHWANT SINHA
Chairman,
Standing Committee on Finance

APPENDIX I

NOTE OF DISSENT

Shri Gurudas Dasgupta, MP

The Direct Tax Code, as the Government envisages, seeks to consolidate and amend the laws relating to the Direct Taxes. The objectives, as stated, are as follows:

1. To consolidate and simplify the Direct Tax laws;
2. To strengthen taxation provision for international transactions;
3. To phase out profit-linked incentives and replace them with investment linked incentive;
4. To rationalize tax incentives and savings;
5. To implement general anti-avoidance rule to curb aggressive tax planning;
6. To tax non-profit making organizations.

The objective does not include at all changing the character of the taxation policy which, in the opinion of a large number of economists is regressive. It is evidently also clear by analyzing of tax rate. The regressive tax system implies that smaller assesses having less income are taxed at higher rates as compared to the larger assesses. The tax system is devoid of the principle of equity as also social justice. Hence the dissent.

The basic inadequacy implying pro-rich slant, continuing over decades, has not been explicitly and strongly reflected in the draft of the Standing Committee. Hence the dissent note.

The taxation policy is the most important tool in the hands of Government to mobilize resources not only to meet its normal expenditure but also mobilize enough funds for social development, tackle poverty, promote inclusive growth and take care of growing unemployment. The objective of tax policy is also intended to take care of growing disparity of income and wealth in the country. Tax system should be so evolved as to maximize the revenue depending on the ability to pay.

The Direct Tax Code is blind to these objectives the political establishment has to undertake. It is completely oblivious of the dangerously

growing inequality and concentration of wealth in the hands of the few in a country where the largest number of poor people in the world live today. This has not been sharply reflected in the report. That is why I put on record my dissent.

Effective Rate of Taxation:

The effective rate of taxation for companies was 22.8 per cent in 2008-09 which is substantially lower than the statutory rate of 33.9 per cent. At present the highest rate is 30 per cent which means further undue benefit has been given to the highest income group. Due to manifold concessions bestowed, the effective tax rate is much lower, little above 22 per cent.

Effective Rate of Taxation

Profit before Tax	**No. of Companies**	**Effective Tax rates**
Less than zero	**149283**	
Zero	**28551**	
0-1 crore	**223888**	**25.70**
1-10 crore	**20621**	**24.97**
10-50 crore	**3880**	**23.79**
50-100 crore	**680**	**22.82**
100-500 crore	**692**	**23.09**
Greater than 500 crore	**216**	**22.55**
All sample companies	**427811**	**23.53**

Source: Receipt Budget

It is therefore conclusively clear that companies having lower profits are being subjected to higher effective rate of taxation as compared to companies having higher profit. The differential rate of taxation is the result of scheme of deductions and exemptions inherent in the Income Tax law. Even after moving away from profit-linked incentives towards investment linked incentives, the inequity inherent in the taxation system, its regressive character is not going to change.

Widening of Tax Base:

From 2005-2006 to 2009-2010 the taxation collections have increased from Rs. 1,65,216 crores to Rs. 3,78,063 crores. The number of assesses is increased only from 298 lakh to 341 lakh. The Direct Tax Code has failed to take into account the need to bring in more assesses to the tax net in order to increase the revenue.

International Taxation and Unaccounted Income:

It is well known that huge sums of money are stashed away in foreign banks. Adequate steps had always been called fro to recover the money and utilize the same for augmenting the tax income. Mere introduction of GAAR is not enough. No provisions have been proposed to aid the Government agencies in framing the double tax avoidance agreements and tax information exchange treaties.

Few more points:

It is extremely distressing that 90 Per cent of the total tax payers belong to the lower slab while only 4 lakh tax payers constituting a mere 1.3 per cent of the tax payers pay tax according to the highest slab. Total exemptions and deductions in the corporate sector are alarmingly increasing, at present it is near to 2 lakh crores. Therefore, it is obvious that individuals and corporate are not paying sufficient tax commensurating to their incomes. The burden of taxation squarely falls on the lower middle income group, and the persons and corporate entities earning enormous income and also having the potential for vast income are grossly under-taxed or completely left out of the tax net. The need for eliminating the regressive character of the tax system and effectively put in place a progressive system so that the real income ad wealth of the people is properly taxed has been deliberately avoided. The growing disparity affecting the social fabric is nowhere taken note of by the tax structure. It is heavily loaded in favour of the affluent and rich.

There is always a trend to avoid tax in India and make illegal money and create ill legitimate assets and even stash away the illegal funds to foreign banks. No effective remedy has been ensured.

Following the same logic of progressive taxation, reflecting truly the wealth being enormously accumulated in the hands of few, the wealth tax should be

made progressive. Wealth tax is too nominal and the vast area of potential taxation is deliberately ignored by the Government.

The Direct Tax Code does not contain any concrete proposals to prevent generation of unaccounted money and bring to book the unaccounted funds stashed away. The existence of the dreadful parallel economy, with huge black money in hand, is deliberately overlooked by the authors of the new tax code.

The vulgar display of the wealth, the costly marriage and birthday ceremonies, setting up of huge mansions in cities like Bombay and Delhi should attract the notice of the tax code. The vulgarity of wealth is not considered by the Government to be an object of heavy taxation.

The Direct Tax as an instrument to bridge disparities in the income and wealth is not a matter of consideration to the Government. Therefore, I put on record my dissent because the taxation system remains regressive, it fails to take effective measures to curb the widening disparity of income, fails in its social objective of generating enough funds for the social welfare. I regret the tax code is pro-rich and is not going to help the Government to generate funds to carry out its co-called *pro-aam aadmi* social welfare schemes. It is obnoxious rather frightful that the people in power think more of the so-called harassment of the tax payers instead of considering its social obligations to the marginalized and poor who are almost half of the population of the country.

Sd/-

(GURUDAS DASGUPTA)

NOTE OF DISSENT

Shri Moinul Hasan, MP

Note: Draft Report of Standing Committee on Finance on Direct Taxes Code Bill

The Direct Taxes Code (DTC) bill comes in the backdrop of a decline in the tax-GDP ratio in the recent years. The direct taxes to GDP ratio has also declined from its peak of 5.9% in 2007-08 to 5.4% as per the budget estimate of 2010-11. This amounts to a weakening of the resource mobilization effort and will constrain development expenditure. Reversing this regressive trend should be an important objective of the DTC.

Tax Revenue as a percentage of GDP

	2005-06	2006-07	2007-08	2008-09	2009-10 (P)	2010-11 (BE)
Direct Taxes	4.3	5.1	5.9	5.7	5.6	5.4
Gross Tax Revenue	9.9	11.0	11.9	10.8	9.6	9.5

Source: Economic Survey, 2010-11, Chapter 3, Table 3.3

While agreeing in principle that the "character of the tax regime should change and it should be made more progressive" (Para 86), there are objections to many of the specific recommendations made in the report. These are listed below:

Comments on Part-I

1. Para 88 and 89 contain recommendations relating to the tax slabs. The fact that there are only 2.8 crore income tax payers in a country of over 120 crore people reflects how narrow our tax base is. Part of the reason is because a large number of rich persons, especially the **rural rich**, continue to be outside the tax net. The report argues in Para 87 that the issue of widening the tax base is relevant only as far as bringing higher income earners into the tax net is concerned. It needs to be added that high income earners also need to be taxed at higher rates. The slabs proposed in the DTC Bill as well as the report will not only shrink the

income tax base but will also lead to revenue loss. There is no justification for lowering the current income tax rates across the board for those earning over Rs. 5 lakh per annum (over Rs. 41500 per month). The following slabs are being proposed as an alternative:

Slab (in Rs. Lakhs)	Tax Rate
0-3	Nil
3-5	10%
5-10	20%
Beyond 10	30%

The linking of adjustment of tax slabs with inflation, as recommended in Para 91, should be restricted to the lowest slab, i.e. Rs. 0-3 lakh only. For the higher income brackets, tax rates should not be revised periodically.

2. Para 92 reveals that the annual wealth tax collection is only to the tune of Rs. 500-600 crore, which is very meager, given the skyrocketing wealth of the super-rich in India. The number of dollar billionaires in India as per the Forbes list has risen from 13 in 2003 to 55 in 2011. The combined net worth of these 55 dollar billionaires stood at over $240 billion in March 2011. The richest person in India, who appears at the top levels of the Forbes list has constructed a 27 floor personal home in Mumbai, with an estimated cost of $2 billion. Such conspicuous consumption is happening because the wealth tax rate is too low. This needs to be enhanced to mop up more revenues from the super-rich. The alternate proposal for wealth tax slabs is as follows:

Net Wealth (in Rs. Crore)	Wealth Tax Rate
0-5	Nil
5-20	1%
20-50	3%
50 and above	5%

3. Para 93 endorses the transition in corporate taxes from profit-based incentives to investment based ones. What needs to be added is that all incentives, either sector-specific or area based, should have a time limit of **not more than 2 to 3 years**. No tax concession should be allowed beyond 3 years. The SEZ Act should also be amended to phase out all profit based incentives, which have been allowed for 10 years.

4. The stringent provisions on General Anti Avoidance Rules (GAAR) and other provisions related to international taxation have been criticized in the report (Para 96 to 100). The big corporates and MNCs are using tax avoidance treaties like India's DTAA with Mauritius to indulge in 'treaty shopping'. It is noteworthy that over 40% of FDI inflows into India are routed through Mauritius, which only points towards tax avoidance and not "bona fide transactions". All the scams in the recent period, from the 2G scam, IPL scam, Jagan Reddy scam in AP etc., have a Mauritius connection. This is leading to huge revenue losses. In this backdrop, the criticisms of the GAAR in the draft report are too harsh and misdirected. While the recommendation of laying GAAR guidelines in parliament is welcome (Para 99), the tax authorities must be empowered to apply GAAR provisions and the onus of proving that a company is not avoiding taxes should lie on the companies (contrary to recommendations of Para 97).

Comments on Part-I

I. Recommendation in Para 1.20 regarding transfer of "small share-holdings and transfer of listed shares outside India" by non-residents is vague. "Small" has not been defined.

II. Recommendation in Para 2.36 regarding raising the quantum of permissible deduction towards repair and maintenance of property to a more "reasonable" percentage is vague, because "reasonable" has not been defined.

III. Para 4.47 mentions that capital gains tax on listed securities if held for more than a year is nil. The long-term capital gains tax on securities should be restored and the rate should be equivalent to capital gains on other asset classes.

IV. Para 7.12 recommends considering tax incentives for industrially backward districts. Experience shows that such incentives are often misused and leads to unhealthy competition between the states and districts, which should be discouraged. All tax incentives should have a sunset clause of 2 to 3 years.

V. Para 9.26 recommends restoration of status quo as far as taxing capital gains and asset transfers made by NPOs (non-profit organizations) in the name of tax simplification. That is not required. The NPOs should pay taxes on capital gains etc.

VI. Para 14.6 on wealth tax should be modified to reflect point 2 in the above section. Para 14.11 recommends exemption of religious trusts from wealth tax. This is not required. The religious trusts who qualify for wealth tax, i.e. having assets over Rs. 5 crore should pay wealth tax.

VII. Para 15.34 & 15.35 on GAAR should be modified to reflect point 4 in the above section.

Sd/-

(MOINUL HASAN)

Minutes of the Fifth sitting of the Standing Committee on Finance

The Committee sat on Thursday, the 18th November, 2010 from 1530 hrs. to 1730 hrs.

PRESENT

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri Bhakta Charan Das
3. Shri Khagen Das
4. Shri Nishikant Dubey
5. Shri Bhartruhari Mahtab
6. Shri Rayapati Sambasiva Rao

RAJYA SABHA

7. Shri Piyush Goyal
8. Shri Mahendra Mohan
9. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri T.G. Chandrasekhar - Additional Director
3. Shri Ramkumar Suryanarayanan - Deputy Secretary

WITNESSES

Ministry of Finance (Department of Revenue)

1. Shri Sunil Mitra, Secretary
2. Shri S.S. N. Moorthy, Chairman (CBDT)

…..2/-

2. The Secretary, Ministry of Finance (Department of Revenue) briefed the Committee on the provisions of the Direct Taxes Code Bill, 2010. Members sought clarifications from the witnesses on issues pertaining to the Bill, which inter-alia incuded objectives behind review of the Income Tax Act, 1961 and Wealth Tax Act, 1957, rationale of tax rate/income slabs for individual assessees, extension of tax exemption limit for salaried tax payers, rationalisation of deductions and exemptions, compuation of income of charitable/Non-Profit Organisations (NPOs), etc. Other issues discussed included impact of inlcusion of General Anti Avoidance Rules (GAAR), Residency test for foreign companies and rates applicable to them, provisions to prevent money laundering and round-tripping of income earned in the Country, extent of rule making powers, proposals to reduce litigation and mounting arrears of direct taxes, clarity with regard to imposition of surcharges and cesses, addressing the question of equity and social goals etc. in the code. The Chairman directed the witnesses to send written replies in response to the queries posed by the Members at the earliest.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE ELEVENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Wednesday, the 19th January, 2011 from 1130 hrs to 1600 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Dr. Baliram (Lalganj)
3. Shri C.M. Chang
4. Shri Bhakta Charan Das
5. Shri Gurudas Dasgupta
6. Shri Nishikant Dubey
7. Shri Bhartruhari Mahtab
8. Shri Mangani Lal Mandal
9. Shri Rayapati Sambasiva Rao
10. Shri Magunta Sreenivasulu Reddy
11. Shri Sarvey Sathyanarayana
12. Shri G.M. Siddeshwara
13. Shri N. Dharam Singh
14. Shri Manicka Tagore
15. Shri Anjan Kumar M. Yadav

RAJYA SABHA

16. Shri S.S. Ahluwalia
17. Shri Raashid Alvi
18. Shri Vijay Jawaharlal Darda
19. Shri Mahendra Mohan
20. Dr. Mahendra Prasad
21. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A. K. Singh – Joint Secretary
2. Shri T. G. Chandrasekhar – Additional Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary

PART- I
(1130 to 1300 hrs.)

WITNESSES

Confederation of Indian Industry (CII)

1. Shri B. Muthuraman, President Designate, CII & Vice Chairman, Tata Steel Ltd.
2. Shri T.N. Manoharan, Chairman, CII Accounting Standards Committee
3. Shri Barindra Sanyal, Vice President-Finance, TCS

2. The Committee heard the representatives of the Confederation of Indian Industry in connection with examination of 'the Direct Taxes Code Bill, 2010'. The major issues discussed with the representatives included, residential status of the foreign companies and rates applicable to them, application of General Anti Avoidance Rules (GAAR), need for implementation of Controlled Foreign Companies (CFC) regulations, ambiguity in computation of Income, taxation of income of Non-Profit Organisations (NPOs), impact of area based incentives in under-developed states and backward regions, deduction on expenses of the companies, provisions for expenditure incurred on Corporate Social Responsibility (CSR) activities etc. The Chairman directed the representatives to furnish written replies to the questions posed by the Members within seven days.

PART- II
(1400hrs. to 1600 hrs.)

WITNESSES

Institute of Chartered Accounts of India (ICAI)

1. CA. G. Ramaswamy, Vice-President, ICAI
2. CA. Jayant P. Gokhale, Chairman, Direct Taxes Committee of ICAI
3. CA. M. Devaraja Reddy, Vice-Chairman, Direct Taxes Committee of ICAI

3. The Committee heard the views of the representatives of the Institute of Chartered Accountants of India Direct Taxes Code Bill, 2010. The major

issues discussed included computation of total income of non-profit organizations/charitable/sports bodies and exemption regime thereof, taxes on the contribution to political parties, provisions for tax on property acquired through, home loans, impact of revision of Double Taxation Avoidance Agreements (DTAAs), taxation of income from house property, taxation of deposits in private companies, impact of inclusion of General Anti Avoidance Rules (GAAR) etc. The Chairman directed the representatives to furnish written replies to the questions posed by the Members within seven days.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

The Committee then adjourned.

MINUTES OF THE SECOND SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Monday, the 17th October, 2011 from 1130 hrs to 1715 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Udasi Shivkumar Chanabasappa
3. Shri Harishchandra Deoram Chavan
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Chandrakant Khaire
7. Shri Bhartruhari Mahtab
8. Dr. Kavuru Sambasiva Rao
9. Shri Rayapati S. Rao
10. Shri Sarvey Sathyanarayana
11. Shri N. Dharam Singh
12. Shri Yashvir Singh

RAJYA SABHA

13. Shri Raashid Alvi
14. Shri Vijay Jawaharlal Darda
15. Shri Piyush Goyal
16. Shri Moinul Hassan
17. Shri Satish Chandra Misra
18. Shri Mahendra Mohan
19. Dr. K.V.P. Ramachandra Rao
20. Shri Yogendra P. Trivedi

SECRETARIAT

1.	Shri A. K. Singh	–	Joint Secretary
2.	Shri R.K. Jain	–	Director
3.	Shri Ramkumar Suryanarayanan	–	Deputy Secretary
4.	Smt. Meenakshi Sharma	–	Deputy Secretary

Part – I

(1130 hrs. to 1400 hrs)

WITNESSES

2.	XX	XX	XX	XX
	XX	XX	XX	XX

The witnesses then withdrew

A verbatim record of proceedings was kept.

Part – II

(1500 hrs. to 1715 hrs)

WITNESSES

National Association of Software and Services Companies (NASSCOM)

1. Shri Som Mittal, President, NASSCOM
2. Shri Pagalthivarthi Srinivasan, Senior Vice President (WIPRO)

Cellular Operators Association of India (COAI)

1. Shri Rajan S. Mathews, Director General
2. Shri Rohit Agarwal, Chairman, COAI F&C Committee

Export Promotion Council for EOUs & SEZs (EPCES)

1. Shri Jatin R. Mehta, Chairman
2. Shri P.C. Nambiar, Vice-Chairman

KPMG / Coalition on International Taxation in India

1. Shri Dinesh Kanabar, Deputy CEO and Chairman Tax, KPMG
2. Shri David Sutherland, Managing Director, Morgan Stanley Asia Limited
3. Shri Steven Robert Flynn, CEO, Global Institutional Investors Forum
4. Shri Ramakrishna Sithanen, Chairman, International Financial Services Ltd.

Ernst & Young Pvt Ltd.

1. Shri Ganesh Raj, Sr Partner
2. Shri Amitabh Singh, Partner
3. Shri Pranav Sayta, Partner

3. The Committee heard the representatives of the (i) National Association of Software and Services Companies (NASSCOM), (ii) Cellular Operators Association of India (COAI), (iii) Export Promotion Council for EOUs & SEZs (EPCES), (iv) KPMG / Coalition on International Taxation in India and (v) Ernst & Young Pvt Ltd. in connection with the examination of the 'Direct Taxes Code Bill, 2010'. The major issues discussed with the representatives included impact of revision of incentives and Minimum Alternate Tax (MAT), need for implementation of Controlled Foreign Companies (CFC) regulations, need for inclusion of General Anti Avoidance Rules (GAAR), international experience of invoking GAAR and impact of revision of Double Taxation Avoidance Agreements (DTAAs), impact of Direct Taxes Code on Special Economic Zones, implications of Place of Effective Management (POEM) rule,

indirect transfer of a capital asset etc. The Chairman directed the representatives to furnish written replies to the questions posed by the Members at the earliest.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

The Committee then adjourned

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 11th November, 2011 from 1130 hrs to 1430 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

1. Shri Udasi Shivkumar Chanabasappa
2. Shri Jayant Chaudhary
4. Shri Gurudas Dasgupta
5. Shri Bhartruhari Mahtab
6. Shri Prem Das Rai
7. Dr. Kavuru Sambasiva Rao
8. Shri Yashvir Singh
9. Shri Manicka Tagore

RAJYA SABHA

10. Shri S.S. Ahluwalia
11. Shri Raashid Alvi
12. Shri Vijay Jawaharlal Darda
13. Shri Piyush Goyal
14. Shri Moinul Hassan
15. Shri Mahendra Mohan
16. Dr. Mahendra Prasad
17. Dr. K.V.P. Ramachandra Rao
18. Shri Y.P. Trivedi

SECRETARIAT

1.	Shri A.K. Singh	_	Joint Secretary
2.	Shri R.K. Jain	–	Director
3.	Shri Ramkumar Suryanarayanan	–	Deputy Secretary
4.	Smt. Meenakshi Sharma	–	Deputy Secretary

WITNESSES

Ministry of Finance (Department of Revenue)

1. Shri R.S. Gujral - Finance Secretary & Revenue Secretary
2. Shri K.M. Nair, Member (L&C)
3. Shri Ashutosh Dikshit, Joint Secretary (TPL-I)
4. Shri Sunil Gupta, Joint Secretary (TPL-II)
5. Smt. Pragya Sahay Saksena, Commissioner of Income Tax

2. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Revenue) in connection with examination of 'the DTC Bill, 2010'. The major issues discussed with the representatives included need for further simplification of the present structure of the Bill, dispersed definitions in the Bill instead of having them in a single preliminary chapter, unduly large number of sub-clauses, definition regarding status of residents, justification for grandfathering some of the existing provisions while leaving some others out of the grandfathering, presumptive taxation for small traders, clauses relating to MAT, GAAR and CFC, overriding effect of GAAR upon DTAAs, need for changing profit based incentives to the investment based incentives, rationale for Area-based deductions, indexing of income tax slabs, slab-based increases in savings-related exemption to encourage savings by higher income groups, need for a lower ceiling of Dividend Distribution Tax for exempting small investors, treatment of long-term capital gains, "windfall tax" for "windfall profits", incorporation of cess and surcharges, determination of "NPOs of public importance" etc.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

The Committee then adjourned

MINUTES OF THE TENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 10th February, 2012 from 1130 hrs to 1300 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Harishchandra Deoram Chavan
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Chandrakant Khaire
7. Shri Bhartruhari Mahtab
8. Shri Prem Das Rai
9. Dr. Kavuru Sambasiva Rao
10. Shri Rayapati S. Rao
11. Shri R. Thamaraiselvan

RAJYA SABHA

12. Shri S.S. Ahluwalia
13. Shri Piyush Goyal
14. Dr. Mahendra Prasad

SECRETARIAT

1. Shri A.K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary

2. The Committee took up the draft report on 'the Direct Taxes Code Bill, 2010' for consideration and adoption. After some deliberations, the Committee decided to have further discussions on the draft Report in view of its volume and importance of the subject. The Committee decided to meet again on 17 February, 2012.

A verbatim record of proceedings was kept.

The Committee adjourned at 1300 hours.

MINUTES OF THE ELEVENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 17th February, 2012 from 1130 hrs to 1430 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Gurudas Dasgupta
4. Shri Nishikant Dubey
5. Shri Bhartruhari Mahtab
6. Shri Prem Das Rai
7. Dr. Kavuru Sambasiva Rao
8. Shri Rayapati S. Rao
9. Shri Magunta Sreenivasulu Reddy
11. Shri Yashvir Singh

RAJYA SABHA

12. Shri S.S. Ahluwalia
13. Shri Piyush Goyal
14. Dr. Mahendra Prasad

SECRETARIAT

1.	Shri A.K. Singh	–	Joint Secretary
2.	Shri R.K. Jain	–	Director
3.	Shri Ramkumar Suryanarayanan	–	Deputy Secretary
4.	Smt. Meenakshi Sharma	–	Deputy Secretary

2. As desired by the Committee, Shri A.K. Singh, Joint Secretary made a PowerPoint presentation on the salient aspects and recommendations contained in the draft Report on 'the Direct Taxes Code Bill, 2010'. As the deliberations remained inconclusive, the Committee decided to meet again on 24 February, 2012.

The Committee adjourned at 1430 hours.

MINUTES OF THE TWELFTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 24th February, 2012 from 1130 hrs to 1430 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Gurudas Dasgupta
4. Shri Nishikant Dubey
5. Shri Chandrakant Khaire
6. Shri Bhartruhari Mahtab
7. Shri Rayapati S. Rao
8. Shri Manicka Tagore
9. Shri R. Thamaraiselvan

RAJYA SABHA

10. Shri S.S. Ahluwalia
11. Shri Raashid Alvi
12. Shri Piyush Goyal
13. Shri Moinul Hassan
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh – Joint Secretary
2. Shri Ramkumar Suryanarayanan – Deputy Secretary

2. The Committee resumed the deliberations on the draft Report on 'the Direct Taxes Code Bill, 2010'. After deliberating on some more issues the Committee decided to meet again on 2 March, 2012 for having discussions on the remaining issues contained in the Report.

The Committee adjourned at 1430 hours.

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 2nd March, 2012 from 1500 hrs to 1700 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Gurudas Dasgupta
4. Shri Nishikant Dubey
5. Shri Bhartruhari Mahtab
6. Shri Prem Das Rai

RAJYA SABHA

7. Shri S.S. Ahluwalia
8. Shri Raashid Alvi
9. Shri Piyush Goyal
10. Shri Moinul Hassan
11. Shri Mahendra Mohan
12. Dr. Mahendra Prasad
13. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary

2. The Committee took up the draft Report on Direct Taxes Code Bill, 2010 for consideration and adoption.

3. The Committee adopted the above draft report with some modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the report in the light of the modification suggested and present the Report to Speaker/ Parliament.

The Committee then adjourned.